

ALFREDO F. SY AND RODOLFO F. SY, PETITIONERS, VS. CHINA BANKING CORPORATION, RESPONDENT.*G.R. No. 213736. June 17, 2020*

Ponente: CARANDANG, J.

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Before this Court is a Petition for Review on Certiorari with Prayer for Issuance of Temporary Restraining Order and/or Preliminary Injunction[1] under Rule 45 of the Rules of Court, assailing the Decision[2] dated September 18, 2013 and the Resolution[3] dated July 1, 2014 of the Court of Appeals (CA) in CA-G.R. CEB SP No. 05994 filed by Alfredo F. Sy (Alfredo) and Rodolfo F. Sy (Rodolfo; collectively, petitioners) against China Banking Corporation (China Bank).

This case involves Lot No. 4740 (subject property), which is located in Linao-Lipata, Minglanilla, Cebu City with an area of 8,371 square meters. It is covered by Transfer Certificate of Title (TCT) No. 5235[4] in the name of Bernandina Fernandez (Bernandina), married to Sy Thian Un. The spouses had eight children, namely: Petra, Priscilo, Elena, Rogelio, Dulcee, Alfredo, Manuel, and Rodolfo.[5]

On July 18, 1969, Bernandina simulated a Deed of Absolute Sale[6] over the subject property in favor of her son, Priscilo, to enable the latter to start a livestock-poultry business. Because of this, Priscilo caused the issuance of TCT No. 21283[7] over the subject property in his name. Subsequently, Priscilo mortgaged the subject property to the Development Bank of the Philippines (DBP) but he was not able to pay the indebtedness, hence, the subject property was foreclosed. Priscilo then migrated to the United States and executed a Special Power of Attorney[8] (SPA) authorizing his sister, Elena, to redeem the subject property in favor of their younger brothers, herein petitioners, who are the actual occupants of the subject property. However, after redeeming the subject property, Elena allegedly forged the signatures of Priscilo and the latter's wife, and, through the forged signatures, she executed a Deed of Waiver and Relinquishment of Rights[9] dated November 22, 1993 and a Deed of Donation[10] dated February 21, 1994 in favor of her children, Eleazar Jr. and Elaine Adlawan. As a result, TCT No. T-83948[11] was issued in the names of Eleazar Jr. and Elaine.[12]

Thereafter, Eleazar Jr. and Elaine (mortgagors) mortgaged the property to China Bank as security for their loan which amounted to P3,700,000.00. Due to their inability to pay, China Bank foreclosed the property and in the public auction dated September 28, 1988, China Bank was declared the highest bidder for the amount of P4,200,000.00. The mortgagors failed to redeem the subject property within the one-year redemption period. Accordingly, China Bank consolidated its title over the subject property and on December 16, 1999, TCT No. 111058[13] was issued in its name.[14]

On December 11, 2000, China Bank filed before the Regional Trial Court (RTC), of Cebu City, Branch 15, a Petition for the Issuance of a Writ of Possession.[15] On December 30, 2000, the RTC issued the Writ of Possession[16] and corresponding Notice to Vacate[17] dated January 5, 2001 in China Bank's favor.[18]

Aggrieved, petitioners filed a motion before the RTC for the dissolution of the Writ of Possession on the ground

that they were the actual possessors of the subject property. Petitioners further alleged that the mortgagors of the property fraudulently caused the title to be transferred to their names through falsification of public documents.[19] The RTC granted petitioners' motion and issued an Order[20] dissolving the Writ of Possession. China Bank appealed but it was dismissed through a Resolution[21] dated October 23, 2003 for failure to pay the required docket fees. China Bank's motion for reconsideration was likewise denied on November 21, 2002.[22]

Meanwhile, on August 21, 1998, petitioners filed an action for recovery of ownership, possession and partition docketed as Civil Case No. CEB-22570 as well as criminal cases for Estafa through Falsification of Public Documents against the mortgagors under I.S Nos. 99-13219-13220.[23]

On the other hand, insistent of its claim, China Bank filed before the RTC a second petition for issuance of a Writ of Possession[24] on January 22, 2009. The same was granted by the RTC on January 4, 2010, and a new Writ of Possession was issued in favor of China Bank.[25] The second Writ of Possession did not mention the previous Writ of Possession which was dissolved and the China Bank, in its second application, did not also mention the fact that the first Writ of Possession was dissolved and that the dissolution has become final.

Petitioners again opposed China Bank's second Writ of Possession through an Omnibus Motion,[26] but this time the RTC denied petitioners' Omnibus Motion through an Order[27] dated April 7, 2010, which is being assailed in this petition for review on certiorari.

In denying petitioners' Omnibus Motion, the RTC ruled that possession of the subject property is an absolute right of the purchaser in a foreclosure proceeding, and that upon consolidation of the purchaser's title, the issuance of the writ of possession becomes a ministerial duty of the court.[28] Further, the RTC held that an application for the writ of possession is ex parte in nature.[29] The RTC also noted that in the Sheriffs Report, there was an attached Undertaking signed by petitioners stating that they recognized the superior right of China Bank to possess the subject property such that they requested for a non-extendible period of seven (7) days to extend their stay in the property purely for humanitarian reasons.[30] Lastly, the RTC determined that petitioners who hold the subject property adversely to the defaulted mortgagors are given by the law other remedies like terceria, to determine whether the Sheriff had rightly or wrongly taken hold of the foreclosed property that does not belong to the judgment debtor, or an independent action to vindicate their claim of ownership or possession over the foreclosed property.[31]

Petitioners moved for reconsideration of the RTC's Order but the same was denied through an Order[32] dated May 25, 2011. Undaunted, they filed a Petition for Certiorari[33] under Rule 65 of the Rules of Court to the Court of Appeals (CA).

On September 18, 2013, the CA rendered its Decision[34] denying the petition. Preliminarily, the CA discussed that the remedy of certiorari used by petitioners in questioning the RTC's orders was improper because the issuance of the Writ of Possession was ministerial in nature, which does not involve any discretion.[35] Secondly, the CA held that the initial dissolution of the first Writ of Possession issued by the RTC was not binding and did not bar China Bank from praying for another writ of possession.[36] The CA determined that res judicata is not applicable in this case because an ex parte petition for the issuance of a possessory writ is not a litigious judicial process under the Rules of Court.[37] Lastly, the CA gave probative value to the Undertaking signed by petitioners because the latter failed to present contrary evidence thereto.[38]

On reconsideration, the CA maintained its ruling against petitioners in its Resolution[39] dated July 1, 2014.

Petitioners now seek this Court's review in this Petition for Review on Certiorari[40] that China Bank counters in its Comment.[41]

Issue

The issue in this case is whether the issuance of the Writ of Possession, in favor of China Bank and against petitioners, was proper.

Ruling of the Court

The petition is meritorious.

China Bank argues that it is the RTC's ministerial duty to issue the Writ of Possession in its favor after title over the property has been consolidated in its name. It maintains that an application for the issuance of a writ of possession is *ex parte* in nature, and that there is even no need to notify the adverse party of the application.

Indeed, the *ex parte* application for writ of possession is a non-litigious summary proceeding without need of posting a bond, except when possession is being sought during the redemption period. It is a time-honored legal precept that after the consolidation of titles in the buyer's name, for failure of the mortgagor to redeem, entitlement to a writ of possession becomes a matter of right. As the confirmed owner, the purchaser's right to possession becomes absolute. There is even no need for him to post a bond, and it is the ministerial duty of the courts to issue the same upon proper application and proof of title.[42]

Therefore, the general rule is that the court possesses no discretion to deny an application for writ of possession if the judgment debtor failed to redeem the foreclosed property within the legal redemption period and hence, ownership is consolidated to the purchaser in the extrajudicial foreclosure sale. The purchaser's possessory right is a legal outgrowth of his or her consolidated ownership — or right of ownership over the foreclosed property — and shall accordingly be recognized by the court through the grant of possessory writ in favor of the purchaser.

However, this general rule is not without exception, and We are convinced that the exception, rather than the general rule, shall apply in this case.

The exception is found in Section 33, Rule 39 of the Rules of Court, viz.:

Section 33. Deed and possession to be given at expiration of redemption period; by whom executed or given. —

x 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. 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.[43] (*Italics, emphasis, and underscoring supplied*)

Pursuant to Section 6 of Act No. 3135,[44] the application of Section 33, Rule 39 of the Rules of Court has been extended to extra-judicial foreclosure sales, such as the one involved in this case, thus:

Sec. 6. In all cases in which an extrajudicial sale is made under the special power herein before referred to, the debtor, his successors in interest or any judicial creditor or judgment creditor of said debtor, or any person having a lien on the property subsequent to the mortgage or deed of trust under which the property is sold, may redeem the same at any time within the term of one year from and after the date of the sale; and such redemption shall be governed by the provisions of sections four hundred and sixty-four to four hundred and sixty-six, inclusive, of the Code of Civil Procedure, in so far as these are not inconsistent with the provisions of this Act. (*Emphasis supplied*)

Foregoing considered, the court's obligation to issue an *ex parte* writ of possession in favor of the purchaser, in an extra-judicial foreclosure sale, ceases to be ministerial in those exceptional cases where a third party is claiming

the property adversely to that of the judgment debtor/mortgagor, and where such third party is a stranger to the foreclosure proceedings wherefrom the ex parte writ of possession was applied for. Understandably, the third party adversely possessing the foreclosed property cannot be dispossessed by a mere ex parte possessory writ in favor of the purchaser, because to do so would be tantamount to a summary ejectment of the third party in violation of the latter's right to due process.[45] Besides, the purchaser's possessory right in an extra-judicial foreclosure of real property is recognized only as against the judgment debtor and his successor-in-interest, but not as against persons whose right of possession is adverse to the latter.[46]

In *Okabe v. Saturnino (Okabe)*,[47] the property bought by the purchaser in a foreclosure sale is being claimed and possessed by a third party adverse to the defaulting mortgagor. Outlining the procedure to be followed, We ruled in *Okabe* that a hearing must be conducted to determine whether possession over the foreclosed property is still with the defaulting mortgagor or if it is already with the third party adversely holding the same against the defaulting mortgagor. We held that if the foreclosed property is in the possession of the defaulting mortgagor, a writ of possession could thus be issued. Otherwise, if the foreclosed property is being possessed by the third party, the purchaser cannot obtain a writ of possession ex parte, however, it is within the purchaser's right to obtain possession over the foreclosed property through the summary action of ejectment.

In this case, petitioners are sourcing their possessory and ownership rights over the subject property from the title of their mother, Bernandina. However, the title to the subject property was transferred through a simulated deed of absolute sale executed by Bernandina in favor of Priscilo, who mortgaged the subject property to DBP and who constituted Elena as his agent to redeem the subject property supposedly in favor of petitioners. However, through Elena's forgery of the Deed of Donation and Deed of Waiver and Relinquishment of Rights, she was able to transfer the title to the names of Eleazar Jr. and Elaine, the herein defaulting mortgagors who thereafter mortgaged the subject property in favor of China Bank. Petitioners assert that they are the real owners of the subject property who are entitled to possession thereof. To back up their assertion, petitioners presented a certification[48] from a document examiner of the Philippine National Police Crime Laboratory, which shows that the signatures of Priscilo and his wife in the Deed of Donation and Deed of Waiver and Relinquishment of Rights were indeed forged.

Moreover, petitioners have filed an independent civil action for recovery of ownership, possession and partition involving the subject property before another RTC on August 21, 1998. The fact that petitioners are the actual possessors of the property under claim of ownership raises a disputable presumption of ownership in their favor. Hence, the true owner must resort to judicial process for the recovery of the property.[49]

The record shows that China Bank already instituted a forcible entry case against petitioners on August 3, 2012, which was however dismissed on the merits for lack of cause of action and for violation of the rule against forum shopping.[50] The forcible entry case was filed after the writ of possession granted in favor of China Bank. The said application for the writ of possession was implemented by Sheriff Jessie A. Belarmino. Upon the implementation thereof, petitioners were forced to leave the subject property, but later on they returned and repossessed it.[51] The dismissal of the forcible entry case by the Municipal Trial Court (MTC) which was subsequently affirmed by the RTC[52] was grounded on the fact that China Bank has no prior physical possession over the subject property. In the forcible entry case, the MTC found that contrary to the claim of China Bank, petitioners have prior physical possession over the subject property before the writ of possession was issued to China Bank pursuant to the consolidation of its title as the highest bidder in the auction sale. Hence, the first requisite for forcible entry case to prosper is not present.[53]

It is relevant to add that the writ of possession granted in favor of China Bank was the result of a second application for the writ of possession instituted by it. The first application was initially granted but then dissolved

upon opposition from petitioners. The dissolution of the first writ of possession was appealed by China Bank but it was dismissed by the CA. There was even no mention of the dissolution of the first writ of possession in the second application by China Bank. We cannot countenance such action undertaken by China Bank. The fact that the first writ of possession was dissolved and such dissolution has become final, China Bank should have made use of other judicial remedies at its disposal to vindicate its claim of possession and ownership over the subject property. It was improper for China Bank to wait for another nine years from the filing of the first application for a writ of possession to institute another application with the same contents and arguments as the first. The institution of the second application for the writ of possession makes a mockery of the judicial process. China Bank seems to be soliciting a much friendly forum as to get what it prays for considering that it waited for so long and after the judge who dissolved the first writ of possession retired before instituting the second application for the writ of possession.

Lastly, China Bank, as a banking institution must be reminded of the oft-repeated principle that a purchaser or mortgagee cannot close its eyes to facts which should put a reasonable man upon his guard, and then claim that he acted in good faith under the belief that there was no defect in the title of the vendor or mortgagor. Banks, their business being impressed with public interest, are expected to exercise more care and prudence than private individuals in their dealings, even those involving registered lands.[54]

WHEREFORE, the petition is GRANTED. The assailed Decision dated September 18, 2013 and the Resolution dated July 1, 2014 of the Court of Appeals in CA-G.R. CEB SP No. 05994 are hereby REVERSED and SET ASIDE. The Writ of Possession dated January 4, 2010 addressed to Sheriff Generoso Regalado is hereby RECALLED and DISSOLVED.

SO ORDERED.

Leonen, (Chairperson), Gesmundo, Zalameda, and Gaerlan, JJ., concur.

[1] Rollo, pp. 16-42.

[2] Penned by Associate Justice Ma. Luisa C. Quijano-Padilla, with Associate Justices Ramon Paul L. Hernando (now a Member of this Court) and Renato C. Francisco, concurring; id. at 44-58.

[3] Penned by Associate Justice ma. Luisa C. Quijano-Padilla, with Associate Justices Ramon Paul L. Hernando (now a Member of this Court) and Carmelita Salandanan-Manahan, concurring; id. at 60-63.

[4] Id. at 64.

[5] Id. at 19-20.

[6] Id. at 65.

[7] Id. at 72.

[8] Id. at 72-73.

[9] Id. at 75.

[10] Id. at 76-77.

[11] Id. at 80.

[12] Id. at 20.

[13] Id. at 81-82.

[14] Id. at 20-21.

[15] Id. at 83-88.

[16] Id. at 89.

[17] Id. at 90.

[18] Id. at 21.

[19] Id. at 91-95.

[20] Penned by Presiding Judge Fortunato M. De Gracia Jr.; id. at 97-98.

[21] Penned by Associate Justice Salvador J. Valdez, Jr. with Associate Justices Josefina Guevara-Salonga and Arturo D. Brion, former member of this Court, concurring; id. at 102.

[22] Id. at 103.

[23] Id. at 21.

[24] Id. at 104-110.

[25] Id. at 111.

[26] Id. at 112-118.

[27] Penned by Presiding Judge Sylvia G. Aguirre Paderanga; id. at 119-124.

[28] Id. at 121.

[29] Id. at 122.

[30] Id. at 122-123.

[31] Id. at 123.

[32] Penned by Presiding Judge Sylvia G. Aguirre-Paderanga; id. at 131-133.

[33] Id. at 134-149.

[34] Supra note 2.

[35] Rollo, p. 52.

[36] Id. at 54.

[37] Id. at 55.

[38] Id. at 57.

[39] Id. at 60-63.

[40] Id. at 16-42.

[41] Id. at 224-230.

[42] *Spouses Gallent, Sr. v. Velasquez*, 784 Phil. 44, 60 (2016).

[43] 1997 RULES OF CIVIL PROCEDURE, Rule 39, Sec. 33.

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

[45] Philippine National Bank v. Court of Appeals, 424 Phil. 757, 770 (2002).

[46] Bank of the Philippine Islands v. Icot, 618 Phil. 320, 331 (2009).

[47] 742 Phil. 1 (2014).

[48] Rollo, at p. 28.

[49] See Bon-Mar Realty and Sport Corporation v. Spouses Nicanor and Esther de Guzman, 592 Phil. 712 (2008).

[50] Rollo, p. 191.

[51] Id. at 189.

[52] Id. at 196.

[53] Id. at 190.

[54] Consolidated Rural bank v. Court of Appeals, 489 Phil. 320, 337-338 (2005).

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