

LOURDES RIVERO DE ORTEGA, PETITIONER, VS. HON. FELIPE NATIVIDAD, ETC., ET AL., RESPONDENTS.*G.R. No. 47714. March 14, 1941*

Ponente: LAUREL, J.

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The petitioner, Lourdes Rivero de Ortega, filed on March 18, 1935, in the Court of First Instance of Ilocos Norte, a complaint to foreclose a mortgage on a certain house and lot, made to her by Limbania de Jesus Vda. de Santos. After due hearing, the said court on March 31, 1936, rendered judgment decreeing the foreclosure of the mortgage. On appeal to the Court of Appeals interposed by the said Limbania de Jesus, defendant in the foreclosure suit, the said judgment was affirmed. Judgment having become final, the Court of First Instance of Ilocos Norte issued a writ of execution directing the provincial sheriff to proceed with the sale of the property mortgaged. The petitioner became the purchaser at the foreclosure sale, and then moved the court for a writ of possession. At this stage of the proceedings, the respondents herein, Aurora B. Suguitan, Elias J. Santos, and Marcela J. Santos, intervened and filed an opposition to the motion, alleging that they were the owners and in possession of the property in question as evidenced by certificate of title Nos. 652104 and 652105 issued in favor of said respondents in the cadastral proceedings of Laoag, Ilocos Norte, before the commencement of the foreclosure proceedings; that there was no encumbrance whatever noted in said certificates of title except government liens for taxes and cadastral fees; that the said respondents were not parties either in the alleged mortgage or in the foreclosure proceedings; and that the petitioner should bring an independent suit against said respondent for the possession of the property.

In an order of June 11, 1940, the Court of First Instance of Ilocos Norte denied the motion for writ of possession and ruled that "el Juzgado no debe ordenar que la aqui demandante, como compradora del inmueble de autos, sea puesta por el Sheriff en posesion del mismo, porque dicho inmueble esta actualmente en posesion de terceras personas y se hallan envueltos derechos de terceros," and that "bajo las circunstancias la demandante, si quiere entrar en posesion del inmueble, tendria que entablar action separada e independiente para el efecto."

The petitioner's motion for reconsideration having been denied, she now applies to this Court for a writ of certiorari to have the aforementioned order reviewed, praying that the same be annulled and that a writ of mandamus be issued commanding the Court of First Instance of Ilocos Norte to order the provincial sheriff to place her in possession of the property. In support of this petition, the petitioner avers "that it is a ministerial function of the said court to issue an order directing the provincial sheriff of Ilocos Norte, to put the petitioner or her representative in possession of the mortgaged property purchased, in order to enforce its own judgment and to carry into effectual execution its decree which directed the sale of the mortgaged property, said sale having been approved and confirmed by the court."

The general rule is that after a sale has been made under a decree in a foreclosure suit, the court has the power to give possession to the purchaser, and the latter will not be driven to an action at law to obtain possession. The power of the court to issue a process and place the purchaser in possession, is said to rest upon the ground that it

has power to enforce its own decrees and thus avoid circuitous actions and vexatious litigation. (Ludlow v. Lansing, Hopk. Ch. [N. Y.] 231; Jones v. Hooper, 50 Miss. 510, 514.) But where a party in possession was not a party to the foreclosure, and did not acquire his possession from a person who was bound by the decree, but who is a mere stranger and who entered into possession before the suit was begun, the court has no power to deprive him of possession by enforcing the decree. (See 2 Wiltsie on Mortgage Foreclosure, 1061-1062; 3 Jones on Mortgages, 301; and the cases cited therein.) Thus, it was held that only parties to the suit, persons who came in under them pendente lite, and trespassers or intruders without title, can be evicted by a writ of possession. (Thompson v. Campbell, 57 Ala. 183, 188; Cooper v. Cloud, 194 Ala., 449, 452). The reason for this limitation is that the writ does not issue in case of doubt, nor will a question of legal title be tried or decided in proceedings looking to the exercise of the power of the court to put a purchaser in possession. A very serious question may arise upon full proofs as to where the legal title to the property rests, and should not be disposed of in a summary way. The petitioner, it is held, should be required to establish his title in a proceeding directed to that end. (Board of Home Missions v. Davis, 70 N. J. E. 577, 62 Atl. 447, 448. For illuminating review, see Thompson v. Campbell, supra.)

The present case is not one where the judgment debtor is in possession (Rivera vs. Court of First Instance, etc. 61 Phil. 20i; Tan Soo Huat v. Ongwico, XXXVI O. G. 125.). Rights of third parties are here involved.

In the answer to the petition filed in this Court by the respondents herein, it is alleged that the lot in question was the exclusive property of their father, Honorato Santos, who died in 1916, and upon whose death the said respondents succeeded to the possession and ownership of the said lot share and share alike; that the building and all other improvements thereon, being conjugal, one half was adjudicated to the respondents and the other half to their mother, Limbania de Jesus; that the alleged mortgage was executed by the said Limbania de Jesus on the whole property in June, 1923, without the knowledge or consent of the respondents; that such encumbrance does not appear in the certificates of title covering the lot and house in question which were issued in favor of the respondents before the commencement of the foreclosure proceedings. It will thus be seen that the respondents acquired possession of the property prior to the commencement of the foreclosure suit and by virtue of a title entirely distinct from that through which the purchaser under the foreclosure claims. Said respondents, therefore, stand in the same position as strangers or third parties whose rights cannot be concluded in a proceeding in which they were not impleaded and wherein they could not appear as a matter of absolute right. The petitioner claims that the respondents are in estoppel because of their omission to intervene during the pendency of the foreclosure suit, of which they were allegedly aware. This contention, far from favoring the petitioner, indicates that a question of title is probably involved, which rests a doubt upon her right to the possession of the property, and which cannot be resolved in a mere motion for a writ of possession. Whether or not the respondents by their own omission have been divested of their proprietary right is a question that should be ventilated in an appropriate proceedings against them.

The writ of certiorari is hereby denied, with costs against the petitioner. So ordered.

Imperial, Diaz, Moran, and Horrilleno, JJ., concur.

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