

**ALBERTO C. ROXAS AND NENITA DE GUIA, PETITIONERS, VS.
MARINA BUAN, COURT OF FIRST INSTANCE OF ZAMBALES, BRANCH
I AND THE PROVINCIAL SHERIFF OF ZAMBALES THRU HIS DEPUTY,
ATILANO ...**

G.R. No. 53798. November 08, 1988

Ponente: CORTES, J.

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CORTES, J.:

In this Petition for Certiorari and Prohibition with Preliminary Injunction, the petitioners question the order of the Court of First Instance of Zambales dated January 16, 1980, placing respondent Marina Buan, the purchaser in a foreclosure suit, in possession of a house and lot claimed to belong to the petitioner Alberto C. Roxas.

The antecedent facts are as follows: On August 19, 1975, Arcadio Valentin constituted a Deed of Real Estate Mortgage on a two-storey residential house and lot in favor of private respondent, Marina Buan, to secure the loan of P78,328.08 granted by the latter to the former.

Upon failure of Valentin to pay the loan on its maturity date, Buan applied for an extrajudicial foreclosure of mortgage which was duly published and advertised for public auction by Olongapo City Sheriff Ramon Y. Pardo on September 29, 1977. Private respondent was the winning bidder in the auction sale and the City Sheriff issued a Certificate of Sale duly registered with the Office of the Register of Deeds on October 26, 1977. Valentin had a period of one (1) year from the date of registration within which to redeem the mortgaged properties. The period for the redemption of the property in question having expired without the property being redeemed by Valentin, a Final Bill of Sale was thereafter issued by the City Sheriff on November 3, 1978.

After Valentin failed to deliver possession of the properties, Buan filed before the Court of First Instance of Zambales a "Petition for the Issuance of a Writ of Possession". As this was not contested, a decision was rendered by respondent court on June 19, 1979, the dispositive portion of which reads:

WHEREFORE, let the corresponding writ of possession be issued ordering the Provincial Sheriff of Zambales or any of his lawful deputies to remove the respondent or any person claiming interest under him from said house and lot located at No. 9-B Katipunan St., East Bajac-Bajac, Olongapo City, and to place the petitioner in possession thereon. The respondent is also ordered to pay the petitioner the amount of P1,000.00 as reasonable attorney's fees, plus costs of suit. [Underscoring supplied.]

[Petition, Annex "C", p. 16, Rollo.]

A writ of possession addressed to the Provincial Sheriff of Zambales was issued on August 22, 1979. The return on the writ as embodied in the Sheriff's Report dated August 28, 1979 showed that when Deputy Sheriff Atilano G. Nanquil tried to execute the writ of possession, he found that petitioners were occupying the premises and refused to vacate the same, on the alleged claim of Atty. Roxas that he bought the house and lot in question from Valentin in the amount of P100,000.00. Atty. Roxas also told Sheriff Nanquil that he introduced improvements

consisting of one bungalow house and one store and that Valentin is no longer residing in the premises [See Petition, Annex "F", p. 20, Rollo.]

In view of the petitioners refusal to abide by the writ of possession, private respondent filed on August 30, 1979 a "Motion for Contempt" against Alberto Roxas and Nenita de Guia. On September 12, 1979, the petitioners through counsel filed with the respondent court their answer thereto arguing that they cannot be held guilty of contempt of court because they were not made parties to the main action.

On January 16, 1980, the respondent trial court, finding merit in petitioners' position that they could not be declared in contempt, issued an order the dispositive portion of which reads as follows:

WHEREFORE, the petition for contempt of Court against the adverse claimant Atty. Alberto Roxas and Mrs. Nenita de Guia is DISMISSED. The respondents Atty. Alberto Roxas and Mrs. Nenita de Guia are, however, ordered to immediately vacate the disputed house and lot in question within a period of fifteen (15) days from receipt of this Order under pain of contempt of Court.

[p. 31, Rollo.]

Disagreeing with the portion of the order directing them to vacate the property, petitioners filed a Motion for Reconsideration on January 28, 1980. However, the respondent court, denied their motion on February 28, 1980.

Thus, petitioners filed the instant petition for certiorari and prohibition on April 12, 1979. This Court issued a Temporary Restraining Order on May 19, 1980.

The petitioners maintain that the respondent court gravely abused its discretion amounting to lack of jurisdiction in issuing the order complained of, upon the theory that it was predicated upon a writ of possession which was ineffective as against them, being third parties. Thus, the order is null and void. They also insist that the private respondent should file an independent action to recover the property, otherwise, there will be a violation of due process of law if they are not given their day in court to prove their adverse claim.

The Court finds petitioners' contention without any legal or factual basis.

In the extrajudicial foreclosure of real estate mortgages, possession of the property may be awarded to the purchaser at the foreclosure sale during the pendency of the period of redemption under the terms provided in Sec. 6 of Act 3135, as amended (An Act to Regulate the Sale of Property Under Special Powers Inserted In or Annexed to Real Estate Mortgages), or after the lapse of the redemption period, without need of a separate and independent action [IFC Service Leasing and Acceptance Corp. v. Nera, G.R. No. L-21720, January 30, 1967, 19 SCRA 181.] This is founded on his right of ownership over the property which he purchased at the auction sale and his consequent right to be placed in possession thereof.

This rule is, however, not without exception. Under Sec. 35, Rule 39 of the Revised Rules of Court, which was made applicable to the extrajudicial foreclosure of real estate mortgages by Sec. 6 of Act No. 3135, the possession of the mortgaged property may be awarded to a purchaser in extrajudicial foreclosures "unless a third party is actually holding the property adversely to the judgment debtor." [Clapano v. Gapultos, G.R. Nos. 51574-77, September 30, 1984, 132 SCRA 429, 434; Philippine National Bank v. Adil, G.R. No. 52823, November 2, 1982, 118 SCRA 110; IFC Service Leasing and Acceptance Corp. v. Nera, supra.] As explained by the Court in IFC Service Leasing and Acceptance Corp. v. Nera, supra:

. . . The applicable provision of Act No. 3135 is Section 6 which provides that, in cases in which an extrajudicial sale is made, "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." Sections 464-466 of the Code of Civil Procedure were superseded

by Sections 25-27 and Section 31 of Rule 39 of the Rules of Court which in turn were replaced by Sections 29-31 and Section 35 of Rule 39 of the Revised Rules of Court. Section 35 of the Revised Rules of Court expressly states that "If no redemption be made within twelve (12) months after the sale, the purchaser, or his assignee, is entitled to a conveyance and possession of the property x x x." The possession of the property shall be given to the purchaser or last redemptioner by the officer unless a party is actually holding the property adversely to the judgment debtor. [Id. at 184-185; Emphasis in the original.]

In the instant case, respondent Deputy Sheriff Atilano G. Nanquil reported the following in his return on the writ of possession:

This certifies that I have personally served a copy of the Writ of Possession together with a copy of the Notice to vacate issued in the above-entitled case upon the defendant Arcadio Valentin and upon the adverse occupants Atty. Alberto Roxas and Mrs. Nenita de Guia on August 23, 1979.

That undersigned had explained to them the contents of said writ;

That I ordered the adverse occupants Atty. Alberto Roxas to vacate the premises of the house and lot in question on or before August 27, 1979;

That up to the present, Atty. Alberto Roxas and Mrs. Nenita de Guia refused to vacate the same, claiming that the house and lot in question was bought by the former from the said defendant in the amount of P100,000.00 and he also introduced improvements thereon consisting of one (1) bungalow house and one (1) store;

That defendant Arcadio Valentin is no longer residing on the properties in question.

[p. 20, Rollo.]

Contending that petitioner Roxas is a party actually holding the property adversely to the debtor, Arcadio Valentin, petitioners argue that under the provisions of Act No. 3135 they cannot be ordered to vacate the property. Hence, the question of whether, under the circumstances, petitioner Roxas indeed is a party actually holding the property adversely to Valentin.

It will be recalled that Roxas' possession of the property was premised on its alleged sale to him by Valentin for the amount of P100,000.00. Assuming this to be true, it is readily apparent that Roxas holds title to and possesses the property as Valentin's transferee. Any right he has to the property is necessarily derived from that of Valentin. As transferee, he steps into the latter's shoes. Thus, in the instant case, considering that the property had already been sold at public auction pursuant to an extrajudicial foreclosure, the only interest that may be transferred by Valentin to Roxas is the right to redeem it within the period prescribed by law. Roxas is therefore the successor-in-interest of Valentin, to whom the latter had conveyed his interest in the property for the purpose of redemption [Rule 39, Sec. 29(a) of the Revised Rules of Court; *Magno v. Viola*, 61 Phil. 80 (1934); *Rosete v. Prov. Sheriff of Zambales*, 95 Phil. 560 (1954).] Consequently, Roxas' occupancy of the property cannot be considered adverse to Valentin.

Thus, in *Belleza v. Zandaga* [98 Phil. 702 (1956)], the Court held that where the purchaser in an execution sale has already received the definitive deed of sale, he becomes the owner of the property bought and, as absolute owner, he is entitled to its possession and cannot be excluded therefrom by one who merely claims to be a "successor-in-interest of the judgment debtor," unless it is adjudged that the alleged successor has a better right to the property than the purchaser at the execution sale. Stated differently, 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. The rule was reiterated in *Guevara v. Ramos* [G.R. No. L-24358, March 31, 1971, 38 SCRA 194].

The rule in *Belleza*, although relating to the possession of property sold in execution sales under what is now Sec. 35, Rule 39 of the Revised Rules of Court, is also applicable to the possession of property sold at extrajudicial foreclosure sales pursuant to Sec. 6 of Act No. 3135 [see *IFC Service Leasing and Acceptance Corp. v. Nera*, supra.] Thus, as petitioner Roxas is not a party holding the property adversely to Valentin, being the latter's successor-in-interest, there was no bar to the respondent trial court's issuance of a writ of possession upon private respondent Buan's application.

It does not matter that petitioner Roxas was not specifically named in the writ of possession, as he merely stepped into the shoes of Valentin, being the latter's successor-in-interest. On the other hand, petitioner de Guia was occupying the house as Roxas' alleged tenant [Rollo, p. 24.] Moreover, respondent court's decision granting private respondent Buan's petition for the issuance of a writ of possession ordered the Provincial Sheriff of Zambales or any of his deputies to remove Valentin "or any person claiming interest under him" from the property [Rollo, p. 16.] Undeniably, petitioners fell under this category.

As petitioners have failed to establish that grave abuse of discretion, as would warrant the issuance of the writ of certiorari and prohibition prayed for, tainted the issuance of the assailed order, the petition must fail.

WHEREFORE, the petition is hereby DISMISSED and the Temporary Restraining Order issued by the Court on May 19, 1980 is LIFTED.

SO ORDERED.

Fernan, C.J., (Chairman), Gutierrez, Jr., Feliciano, and Bidin, JJ., concur.

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