

SPOUSES ENRICO MALONZO AND AVELINA MALONZO, BARBARA BROWN, AND BONIFACIA MONZON, PETITIONERS, VS. HON. HERMINIO MARIANO, JUDGE, CFI, MANILA, BR. IV, BANCO FILIPINO SAVINGS AND M...

G.R. No. 53998. May 31, 1989

Ponente: NARVASA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-53998/>

NARVASA, J.:

The principal issue raised in the special civil action of prohibition at bar is whether or not a writ of possession issued by a Court of First Instance (Regional Trial Court) in accordance with Act 3135, to give possession of property sold at an extra-judicial foreclosure sale to the purchaser thereof, may be enforced against persons other than the mortgagor.

The property in question consists of two (2) parcels of land and the apartment and commercial building thereon standing, located at R. Magsaysay Boulevard, Sta. Mesa, Manila. A mortgage was constituted over this property by its owner then, Universal Ventures, Inc., in favor of Banco Filipino Mortgage & Savings Bank, as security for the payment of a loan of P350,000.00.¹ The mortgage deed authorized the extra-judicial foreclosure of the property in the event of default in the repayment of the loan. It was later amended to extend to and cover an additional and total consolidated loan of P400,000.00.² Universal Ventures, Inc. failed to repay the loan. Consequently, Banco Filipino caused the extra-judicial foreclosure of the property by the City Sheriff of Manila. The foreclosure sale took place in due course; the mortgaged property was struck off to the bank, as highest bidder; and the bank registered the sheriff's certificate of sale with the Register of Deeds of Manila and on July 27, 1976 obtained a certificate of title in its name, numbered 122496, in lieu of that of the mortgagor, which was accordingly cancelled.¹

On the same day that title was issued to it, Banco Filipino filed a petition for a writ of possession with the Court of First Instance of Manila.² The petition recited the foregoing facts and the additional circumstances that (1) the mortgagor, Universal Ventures, Inc., had failed to redeem the property within the one-year period allowed by law, and (2) the mortgagor was still in possession of the property, as well as certain other persons claiming rights under said mortgagor although said rights had not been recorded in the Register of Deeds, and prayed -

" ... that after due notice and hearing, ** (the) Court forthwith issue in accordance with Section 7 of Act No. 3135, as amended by Act No. 4118, a writ of possession of the property in favor of the petitioner and against the respondent and all persons claiming under it, to vacate the premises** covered by and embraced in (the mortgagor's title,) Transfer Certificate of Title No. 67992 of the Register of Deeds of Manila."

Among the persons named in the petition as "claiming (rights) under" Universal Ventures, Inc. were petitioners Avelina Malonzo, Barbara Brown, and Bonifacia Monzon.³ The petition contained a "Notification" addressed to the Clerk of Court to set the hearing thereon on July 30, 1976 at 9:00 o'clock in the morning; and copies were served on the Universal Ventures, Inc. and the persons alleged to be claiming rights under it.⁴

After hearings were had on the petition, Judge Herminio Mariano issued the order now assailed, under date of September 20, 1979, the dispositive portion whereof reads as follows:⁵

WHEREFORE, let the corresponding Writ of Possession be issued directing the Sheriff of Manila or his duly authorized representative to place the herein petitioner in actual possession of the foreclosed properties described in Transfer Certificate of Title No. 67992 and to eject therefrom the herein respondent, its officers, agents and other persons claiming under said respondent.

The writ of possession issued on March 4, 1980 and on the strength thereof, the Sheriff of Manila attempted to evict the persons in occupancy of the property.⁶

Three of the persons sought to be evicted, Enrico Malonzo, husband of Avelina Malonzo, Barbara Brown, and Bonifacia Monzon, filed suit against Banco Filipino and the City Sheriff in the same Court of First Instance of Manila seeking to perpetually restrain the enforcement of the writ of possession against them, and to recover damages resulting from the defendants' attempts to enforce it.¹ The action was docketed as Civil Case No. 132075. In their complaint, they alleged that they were occupying their respective premises in the foreclosed property "by virtue of a verbal lease contract with Universal Ventures, Inc.," that "there being no ejectment case filed against them neither were they made a party to the Petition for Writ of Possession of defendant BANCO FILIPINO **," they were entitled to remain in possession and could not be ousted under the writ of possession; moreover, "under Presidential Decree No. 20 and Batas Pambansa Blg. 25, transfer of ownership whether by virtue of sale or mortgage will not be a ground for ejectment."

Fourteen (14) days later, these same persons -- Enrico Malonzo, Barbara Brown and Bonifacia Monzon -- and Enrico's wife, Avelina Malonzo, instituted a second action, this time, a special civil action for prohibition, commenced in this Court by petition dated June 6, 1980. Named respondents were the same defendants in Civil Case No. 132075 -- Banco Filipino and the City Sheriff of Manila -- as well as Judge Mariano, who had issued the writ of possession. The petition recited substantially the same facts as those set out in the complaint in Civil Case No. 132075, and submitted the same thesis, that they could not be evicted from the premises "there being no ejectment case filed against them neither were they made a party to the petition for writ of possession filed by respondent Bank," and "under Presidential Decree No. 20 and further reiterated in Batas Pambansa Bilang 25, transfer of ownership whether by virtue of sale or mortgage will not be a ground for ejectment **."

Section 7 of Act 3135, as amended by Act 4118, grants to the purchaser at an extra-judicial foreclosure sale, an absolute right to possession of the property sold during the one-year period of redemption and a fortiori, after the lapse of said period without any redemption being made.² Possession may be obtained under a writ which may be applied for ex parte. Section 7 reads as follows:

SEC. 7. In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance of the province or place where the property or any part thereof is situated, to give him possession thereof during the redemption period, furnishing bond in an amount equivalent to the use of the property for a period of twelve months, to indemnify the debtor in case it be shown that the sale was made without violating the mortgage or without complying with the requirements of this Act. Such petition shall be made under oath and filed in form of an ex parte motion in the registration or cadastral proceedings if the property is registered, or in special proceedings in the case of property registered under the Mortgage Law or under section one hundred and ninety-four of the Administrative Code or of any other real property encumbered with a mortgage duly registered in the office of any register of deeds in accordance with any existing law, and in each case the clerk of the court shall, upon the filing of such petition, collect the fees specified in paragraph eleven of section one hundred and fourteen of Act Numbered Four hundred and ninety-six, as amended by Act Numbered Twenty-eight hundred and sixty-six, and the court shall, upon approval of the bond, order that a writ of possession issue, addressed to the sheriff of the province in which the property is situated, who shall execute

said order immediately.

There being no dispute about the fact that no redemption had been made within one (1) year from registration of the extra-judicial foreclosure sale, there can be no question about the absolute right of Banco Filipino, as purchaser, to a writ of possession¹, or stated otherwise, the ministerial duty of the Court to issue the writ,² upon mere motion, without need of instituting a separate action for the purpose.³ The question is whether or not that writ of possession -- which is the final process to carry out or consummate the extra-judicial foreclosure of the mortgage -- may be enforced by the sheriff against persons other than the mortgagor who are in occupancy of the foreclosed property. To this question this Court has already had occasion to give an affirmative answer, grounded particularly on the provisions of Section 35, Rule 39 of the Rules of Court which are inter alia suppletory to Act 3135.⁴

"Under section 6 of Act No. 3135 and Sections 29 to 31 and section 35 of Rule 39 of the Revised Rules of Court, in case of an extra-judicial foreclosure of a real estate mortgage, the possession of the property sold may be given to the purchaser by the sheriff after the period of redemption had expired, unless a third person is actually holding the property adversely to the mortgagor. An ordinary action for the recovery of possession is not necessary. There is no law in this jurisdiction whereby the purchaser at a sheriff's sale of real property is obliged to bring a separate and independent suit for possession after the one-year period for redemption has expired and after he has obtained the sheriff's final certificate of sale. (Tan Soo Huat vs. Ongwico, 63 Phil. 746, 749). The same rule was followed in a judicial foreclosure of mortgage and in an execution sale (Rivera vs. Court of First Instance of Nueva Ecija, 61 Phil. 201 and Republic vs. Nable, L-4979, April 30, 1952). If the court can issue a writ of possession during the period of redemption there is no reason why it should not also have the same power after the expiration of that period.¹

The petitioners cannot be deemed third parties "actually holding the property adversely" to the mortgagor. They derive their rights to the possession of the property exclusively from the mortgagor, in virtue of verbal agreements of lease. They were lessees at the time that the property occupied by them was mortgaged by their lessor to respondent Banco Filipino. And of that mortgage they were charged with constructive knowledge upon its registration in the Registry of Property, if they did not indeed, actually know of it. The right pertaining to them in this situation was that of being notified of the application for a writ of possession and of being accorded an opportunity at a hearing to oppose the same, as by showing that they were "actually holding the property adversely" to the mortgagor. That right was duly accorded to them. They were served with copies of the motion or petition for issuance of the writ of possession and had ample opportunity to oppose the same, to persuade the Court that the writ should not issue or be executed against them. The proceedings showed that, by their own assertions, they were not holding the property adversely to the mortgagor, but were exercising rights under, derived from, said mortgagor, who was their lessor. Upon the cessation of their lessor's rights over the property, their own also ceased. The writ of possession was therefore properly enforceable against them.

The situation is not significantly different from that contemplated by Section 49 (b) of Rule 39, declaring a final and executory judgment or order conclusive and hence enforceable not only against the parties but also "their successors in interest by title subsequent to the commencement of the action or special proceeding." Pursuant to this provision, a judgment in personam directing a party to deliver possession of property to another is binding not only against the former but also against his successors in interest by title subsequent to the commencement of the action, i.e., those whose possessory rights are derived from him,² e.g., lessees, possessors by tolerance, assignees. As regards the latter, it is not required that a separate action be instituted against them to litigate the issue of possession; due process is satisfied by holding a hearing, with notice to them, on the nature of their possession, and thereafter denying or acceding to the enforcement of a writ of possession against them as the findings at said hearing shall warrant.³

WHEREFORE, the petition is DISMISSED for lack of merit, and the case is remanded to the Court a quo with instructions to forthwith issue in favor of respondent bank an alias writ of possession enforceable against the petitioners or their successors in interest, and all other persons claiming under, or not otherwise actually holding the property adversely to, the mortgagor, Universal Ventures, Inc. Costs against petitioners.

SO ORDERED.

Cruz, Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

1 Rollo, p. 24

2 Id., p. 25

1 Id., pp. 25, 35

2 Docketed as LRC Rec. No. 7680, and assigned to Branch IV, CFI, Manila (Rollo, p. 31)

3 Rollo, p. 26

4 Id., p. 29

5 Italics supplied

6 Rollo, p. 31

1 Id., pp. 30-34

2 IFC Service Leasing & Acceptance Corp. v. Nera, 19 SCRA 181, cited in GSIS v. CA, 145 SCRA 341; Banco Filipino Savings and Mortgage Bank v. I.A.C., et al., 142 SCRA 44

1 SEE GSIS v. CA, supra, 145 SCRA 341, De Gracia v. San Jose, 94 Phil. 623

2 Barican v. I.A.C., G.R. No. 77906, June 30, 1988, citing Banco Filipino Savings & Mortgage Bank v. I.A.C., supra, 142 SCRA 44; PNB v. Adil, 118 SCRA 110; De los Angeles v. C.A., 60 SCRA 116; IFC Service Leasing and Acceptance Corp. v. Nera, supra, 19 SCRA 181; De Gracia v. San Jose, 94 Phil. 623; Ramos v. Mañalac, 89 Phil. 270

3 GSIS v. CA, supra, citing Marcelo Steel Corp. v. CA, in turn citing De Gracia v. San Jose, supra, IFC Service Leasing & Acceptance Corp. v. Nera, supra, 19 SCRA 181

4 Indeed, Act 3135, as amended, incorporates the provisions of Act 190 (the Code of Civil Procedure [now the Rules of Court, of course]) governing redemption of real property sold by the sheriff at execution sales. As far as relevant, said Section 35, Rule 39, declares that after the redemption period has expired, "possession of the property shall be given to the purchaser ** by the same officer (sheriff) unless a third party is actually holding the property adversely to the ** (mortgagor)."

1 IFC Service Leasing & Acceptance Corp. v. Nera, supra, 19 SCRA 181; emphasis supplied

2 Ariem v. delos Angeles, 49 SCRA 343; Gatchalian v. Arlegui, 75 SCRA 334; Guevarra Realty, Inc. v. CA, G.R. No. 57469, April 15, 1988

3 Perater v. Rosete, 129 SCRA 508; Omaña, et al. v. Gatulayao, et al, 73 Phil. 66; Santiago v. Sheriff of Manila, 77 Phil 740, Gozon v. de la Rosa, et al., 77 Phil. 919

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.