

**BANCO FILIPINO SAVINGS AND MORTGAGE BANK, PETITIONER, VS.
HONORABLE BERNARDO P. PARDO, JUDGE OF THE COURT OF FIRST
INSTANCE OF CALOOCAN, SEVENTH JUDICIAL DISTRICT, BRANCH
XXXIV,...**

G.R. No. 55354. June 30, 1987

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

In this application for a writ of certiorari, the petitioner assails the order of the respondent, Judge Bernardo Pardo of the defunct Court of First Instance, Branch XXXIV, Caloocan City, now Regional Trial Court, dismissing its petition for the issuance of a writ of possession over a parcel of land located at Caloocan City.

It appears that on August 10, 1971, the private respondents, the spouses Celedonio and Celedonia Cacas, acquired a loan, payable on installments, from the petitioner bank, in the sum of P33,453.00.[1] As security therefor, they mortgaged in favor of the bank the parcel aforementioned embraced by Transfer Certificate of Title No. 40338 registered in their name.

The Cacas subsequently defaulted in the installment payments, leaving an unpaid balance in the sum of P28,969.50. On July 25, 1977, the petitioner extra-judicially foreclosed the mortgage pursuant to the provisions of Act No. 3135. At the auction sale, the petitioner itself was the highest bidder.

On August 5, 1977, a certificate of sale was issued. On the same date, the certificate was registered.

On October 26, 1977, the petitioner filed a petition for the issuance of a writ of possession pursuant to Section 7 of Act No. 3135. Meanwhile, the private respondent, Celedonio Cacas, died on June 27, 1978.[2] On September 18, 1979, the petitioner filed a motion for substitution of party. On January 10, 1980, the respondent court issued an order directing the petitioner to effect the substitution.

For failure of the petitioner to effect the substitution ordered, the lower court, on March 13, 1980, issued an order dismissing the petition, "without pre-judice to petitioner availing itself of the remedies of eviction under the proper law." Its motion for reconsideration having been denied, the petitioner came to this Court.

There is merit in this petition.

Under Section 7 of Act No. 3135, the purchaser at the auction sale, in this instance, the petitioner/mortgagee, is entitled to a writ of possession pending the lapse of the redemption period upon a simple motion and upon the posting of a bond.[3] It has been held that in such a case, "no discretion is left to the court." [4] Furthermore, "such petition shall be ... in the form of an ex parte motion ..." [5] This was the recourse in fact taken by the petitioner. There is accordingly no necessity for the petitioner to file an ejectment case. The remedy of the mortgagors-respondents is to have "the sale ... set aside and the writ of possession cancelled," [6] in accordance with Section 8 of the Act.

The proceedings being ex parte, we need not pass upon the question of the effect of the death of Celedonio Cacas, one of the mortgagors.

WHEREFORE, the petition is GRANTED. The orders dated March 13, 1980 and September 29, 1980 are SET ASIDE. Upon the petitioner's filing of the bond and the approval thereof pursuant to the provisions of Section 7, Act No. 3135, the respondent court is hereby ordered to issue the writ of possession forthwith. Costs against the private respondents.

IT IS SO ORDERED.

Yap, (Chairman), Narvasa, Melencio-Herrera, Cruz, Feliciano, and Gancayco, JJ., concur.

[1] Rollo, 18.

[2] Id., 9.

[3] Act No. 3135, sec. 7; Banco Filipino Savings and Mortgage Bank v. Intermediate Appellate Court, No. L-68878, April 8, 1986, 142 SCRA 44 (1986).

[4] Supra, at 47, citing Marcelo Steel Corp. v. Court of Appeals, Nos. L-34317 and 34335, November 28, 1973, 54 SCRA 89 (1973) and De Garcia v. San Jose, 94 Phil. 623 (1957).

[5] Supra, Act No. 3135, sec. 7.

[6] Supra, sec. 8.

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