

MANUEL IBASCO AND EDITA TAMPINGCO, PETITIONERS, VS. HON. EDUARDO P. CAGUIOA, IN HIS CAPACITY AS PRESIDING JUDGE OF THE COURT OF FIRST INSTANCE OF BULACAN BRANCH VIII, VALENZUELA...

G.R. No. 62619. August 19, 1986

Ponente: PARAS, J.

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PARAS, J.:

The sole issue in this petition for certiorari is whether or not a mortgagee, who has foreclosed upon the mortgaged real property of a delinquent debtor and has purchased the same at the foreclosure sale, can be granted a writ of possession over the property despite the fact that the premises are in the possession of a lessee thereof and whose lease has not as yet been terminated.

We answer this in the affirmative, unless the lease had been previously registered in the Registry of Property or unless despite non-registration, the mortgagee had prior knowledge of the existence and duration of the lease (actual knowledge being equivalent to registration).

The undisputed facts of this case are comparatively simple: Petitioners Manuel IBASCO and Edita TAMPINGCO are the lessees of a residential house located at no. 12, Tamaraw Street, Marulas, Valenzuela, Metro Manila, which they had leased from the spouses Anastacio Garcia and Asuncion Garcia (the GARCIAS, for short) at a monthly rental of P 1,500.00 (P1,000.00 being paid by petitioner IBASCO for the portion occupied by him, and P 500.00 being paid by petitioner TAMPINGCO for the part used by her). IBASCO and TAMPINGCO were religiously paying their monthly rentals to the GARCIAS, and were unaware of the fact that the GARCIAS had mortgaged the property with respondent Banco Filipino Savings and Mortgage Bank (BANK, for short), that because of non-payment by the GARCIAS, the mortgage had been foreclosed, and that the re-demption period had already expired. The lessees were served on December 1, 1982 by the deputy sheriff of Ricardo Cruz, ex-officio sheriff with a copy of the writ of possession, the issuance of which had been ordered by the court authorities and which writ gave petitioners five days from December 1, 1982 within which to vacate the premises.

The lessees then elevated the case to Us claiming that the lower court (Regional Trial Court of Bulacan, Branch VIII presided over by then Judge, later Appellate Justice Eduardo P. Caguioa) had abused its discretion in issuing the writ of possession. We granted the temporary restraining order prayed for, and enjoined the sheriff from enforcing the aforesaid writ. Additionally We ordered private respondents to comment on the petition. The comment and the Reply thereto having been received, We gave due course to the petition, considered the comment as the Answer of the private respondents (See Rollo, p. 62) and resolved to consider the case submitted for decision.

Petitioners raise the following points in support of their petition for certiorari:

(1)

Act 3135 (re the grant of the writ of possession) was impliedly repealed by Batas Pambansa Blg. 25 (the House Rental Law);

(2)

The writ of possession may be granted only in a land registration case, not in an extrajudicial foreclosure of a mortgage.

(3)

Their petition is the only adequate remedy for them in this case.

With reference to the alleged repeal, We say there is no such repeal, there being nothing inconsistent between the two laws. Act 3135 provides for the procedure in extra-judicial foreclosure of mortgages, while Batas Pambansa Blg. 25 refers to the maximum rent in certain leases and to grounds for ejectment. While it is true that under the latter law, there can be no ejectment of lessee simply because the property has been sold or mortgaged to another, it is different if as a result of said mortgage, the same has been foreclosed upon, as provided for in Act 3135 which expressly grants the issuance of a writ of possession (without prejudice to the rights of a lessee under the Civil Code). Besides, Batas Pambansa Blg. 25 can in no case apply here because the rental of the property is P1,500.00 monthly (far in excess of the P300.00 rent regulated by the Batas).

Anent the contention that the writ of possession can be obtained only in a land registration case, suffice it to say that in Section 7 of Act 3135, the writ of possession will be issued only in the land registration or cadastral proceedings of the property involved. This is precisely what has been done in the instant case. Section 7, herein above referred to, reads as follows:

"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 complying with the requirements of this Act. Such petition shall be made oath and filed in form of an ex-parte motion in the registration or cadastral proceedings if the property is registered. x x x" (Underscoring supplied)

In view of what has already been stated. We find no need to discuss the remedies that could have been availed of by the petitioners.

Before We close, We wish to point out that conformably with the provisions of Art. 1648 of the Civil Code, the petitioners herein could have continued in their possession as lessees if the lease had been registered in the Registry of Property, or if the existence and duration of the lease had been known to the private respondents. Art. 1648 of the Civil Code reads:

"Every lease of real estate may be recorded in the Registry of Property. Unless a lease is recorded, it shall not be binding upon third persons. "

In the case at bar neither instance has been alleged and proved.

WHEREFORE, this petition is hereby DISMISSED. No costs.

SO ORDERED.

Feria, (Chairman), Fernan, Alampay, and Gutierrez, Jr., JJ., concur.

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