

F. DAVID ENTERPRISES, REPRESENTED BY OWNER/PROPRIETOR, FRANCISCO DAVID AND NORMA DAVID, PETITIONERS, VS. INSULAR BANK OF ASIA AND AMERICA (IBAA) NOW PHILIPPINE COMMERCIAL INTERN...*G.R. No. 78714. November 21, 1990*

Ponente: CRUZ, J.

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For alleged non-payment of obligations secured by a real estate mortgage executed by Francisco and Norma David in its favor on July 17, 1980, IBAA instituted extrajudicial foreclosure proceedings. The auction sale was held on August 11, 1980 and the mortgaged property was sold to IBAA as the highest bidder. The certificate of sale was registered on August 13, 1980. After one year, no redemption having been effected by the mortgagors, ownership of the land was consolidated in IBAA and a new certificate of title was issued in its name on August 23, 1982. On December 30, 1984, IBAA filed a petition for a writ of possession over the said lot in what was subsequently docketed as LRC No. 145 in the Regional Trial Court of Pampanga, Branch 41. The petition was granted on January 31, 1985, and the writ prayed for was issued on February 4, 1985.

On February 7, 1985, the David spouses filed a motion to recall the writ and dismiss LRC No. 145, calling the attention of the trial court to two other pending cases involving the subject property. The first was Civil Case No. 6169 in the Regional Trial Court of Pampanga, Branch 44, which was a petition to prohibit the foreclosure sale on the ground that the real transaction between the parties was not a real estate mortgage but a trust receipt agreement. The second was Civil Case No. 6565 in the Regional Trial Court of Pampanga, Branch 45, where the mortgagors were seeking the cancellation of IBAA's transfer certificate of title on the ground of the nullity of the foreclosure sale. In this latter case, the trial court had issued a preliminary injunction order against IBAA dealing with or entering into the possession of the subject lot although the writ itself had not yet been granted because the petitioner's bond was still awaiting approval.

Informed of these cases, Judge Felipe Kalalo of Branch 41[1] recalled the writ of possession and dismissed LRC No. 145 on March 6, 1985. This prompted IBAA to file a motion for reconsideration on March 21, 1985, where it argued that since the petitioner's bond had not yet been approved in Civil Case No. 6565, the injunction order issued therein should be regarded only as a temporary restraining order which under BP No. 224 should be deemed to have expired after twenty days from issuance. The motion was denied on April 2, 1985, on the ground that the movant had earlier recognized the validity of the injunction order.

Meanwhile, two important developments transpired in Civil Case No. 6565 that affected LRC No. 145. The first was the approval of the indemnity bond and the issuance of the writ of preliminary injunction by Judge Pedro Laggui on September 17, 1985. The second was the dismissal of the complaint itself on November 20, 1985, on the ground that the foreclosure sale had been validly held because the order issued in Civil Case No. 6169 to restrain the said sale had been served tardily on the provincial sheriff.

On January 3, 1986, IBAA filed a second motion for reconsideration in LRC No. 145, arguing that in view of the dismissal of Civil Case No. 6565 and the consequent lifting of the writ of preliminary injunction, there was no more reason for not issuing the writ of possession. This motion was also denied, the trial court holding *inter alia* that it had no more jurisdiction over the case because its resolution of April 2, 1985, not having been seasonably appealed, had become final and executory.

Nothing daunted, IBAA filed a manifestation and motion on March 5, 1986, reiterating its earlier arguments and adding that its second motion for reconsideration should at least be treated as anew petition for a writ of possession that under the circumstances should now be granted. This was likewise denied, the court ruling in its resolution dated April 4, 1986, that a second motion for reconsideration was not allowed, and much less a third, under the interim Rules.

On May 8, 1986, IBAA filed a petition for certiorari and mandamus with preliminary mandatory injunction with the Court of Appeals questioning Judge Kalalo's refusal to issue the writ of possession and its order of February 12, 1986, denying its second *ex parte* motion for reconsideration. In a decision dated November 28, 1986, the respondent court reversed the trial court and ordered it to issue the writ of possession.[2]

A copy of the decision was sent by registered mail to the petitioner's counsel at his address of record at Suite 349 Isabel Building, España, Manila, but remained unclaimed despite registry notices sent to him on December 3, 1986, December 4, 1986, and December 5, 1986.

On January 26, 1987, IBAA filed with the trial court a motion for the issuance of the writ of possession directed by the Court of Appeals. Copies of the motion and the decision of the respondent court were received by the petitioner's counsel at his address of record on January 26, 1987. On February 3, 1986, the petitioner filed a motion dated January 29, 1987, asking for the resetting of the hearing on the IBAA motion scheduled for January 30, 1987. The motion was denied, and on February 4, 1987, the writ of possession was issued, copy of which was received by the petitioner on February 16, 1987.

Insisting that it had not yet been served with an official copy of the decision of the respondent court, the petitioner requested from the clerk of the Court of Appeals a certified copy thereof, which it received on February 26, 1987. It was only on this date that the petitioner's counsel formally notified the respondent court of his new address at his residence in Quezon City.

On March 12, 1987, the petitioner filed a motion for reconsideration, which was denied on May 27, 1987. The petitioner was notified of the denial on June 5, 1987. It then came to this Court and was, on motion, over the private respondent's opposition, granted a 25-day extension to file the petition. The petition was finally filed on July 3, 1987.

A review of the material dates shows that the motion for reconsideration of the decision of the respondent court was filed out of time.

The petitioner's counsel was deemed served with a copy of the challenged decision on December 8, 1986, five days after the first registry notice sent to him on December 3, 1986. The applicable rule is Rule 13, Section 8 of the Rules of Court reading as follows:

SEC. 8. Completeness of service ? Personal service is complete upon actual delivery. Service by ordinary mail is complete upon the expiration of five (5) days after mailing, unless the court otherwise provides. Service by registered mail is complete upon actual receipt by the addressee; but if he fails to claim his mail from the post office within five (5) days from the date of first notice of the postmaster, service shall take effect at the expiration of such time.

The notice was sent to the address of record of the petitioner's counsel, Atty. Reynaldo L. Libanan, which at that time was still Suite 349 Isabel Building, España, Manila. His excuse for the delay in informing the Court of Appeals of his new address is not satisfactory. He claims he was in mourning after his wife's death sometime in September 1986 and preferred to transfer his office to his residence where, besides saving on expenses, he could also give moral support to his grieving children. As he styles his law office as "R. L. Libanan and Associates," there would have been associates to attend to the simple task of notifying the respondent court of his change of address, let alone collecting the mail. Moreover, the Court notes that although the claims to have transferred his office to his residence sometime in October 1986, he nevertheless still received, on January 26, 1987, a copy of the motion for a writ of possession, with a copy of the decision attached, at his old address. This is admitted in his Motion for Postponement dated January 29, 1987. Despite all this, Atty. Libanan declared in his Manifestation dated March 28, 1987 that he "had not received a copy of the said decision until FEBRUARY, 26, 1987 upon request" and thus ensnared himself in an obvious prevarication. Deceptiveness ill becomes a member of the bar and officer of the court, more so if it is intended to effect a miscarriage of justice.

The facts are incontrovertible. The decision of the respondent court was promulgated on November 28, 1986. Conformably to Rule 13, Section 8, of the Rules of Court, service thereof on the petitioner at his address of record was deemed completed on December 8, 1986. The petitioner had 15 days, or until December 23, 1986, within which to file a motion for reconsideration. The motion was actually filed on March 12, 1987, or 79 days later. The decision had then long become final and executory and could no longer be disturbed.

On this justification alone, the present petition can be denied outright.

The petitioner argues, however, that it is IBAA that was tardy because the decision of the trial court dated March 6, 1985, was no longer appealable when it was elevated to the respondent court after three motions for reconsideration thereof were all denied. As the respondent court had no jurisdiction to entertain the appeal, it is its own decision of November 28, 1986, that is totally null and void and can be challenged any time.

This seems a neat way of turning the tables but it comes rather late in the day, considering the circumstances of this case. It is noted that not a word on jurisdiction was said by the petitioner in the Court of Appeals, where the decision of the trial court was extensively discussed. Only after it was reversed did it occur to the petitioner to question the competence of the respondent court and, at that, not even immediately. The question was not raised in its motion for reconsideration of March 12, 1987. The issue was hardly touched in its petition with this Court dated July 3, 1987. It was not mentioned at all in its reply dated May 18, 1988. It was only in its memorandum dated September 28, 1988, that it was finally roused into challenging the jurisdiction it had neglected for so long to impugn.

We have repeatedly held that where a party voluntarily submits to the jurisdiction of the court and thereafter loses on the merits, he may not thereafter be heard to say that the court had no jurisdiction after all.^[3] "The party is barred from such conduct not because the judgment or order of the court is valid and conclusive as an adjudication but for the reason that such a practice cannot be tolerated - obviously for reasons of public policy."^[4]

But the more important consideration is that, as the respondent court correctly observed, the issuance of a writ of possession in a land registration case is a mere post-judgment incident that is governed by special rules.

It is settled that the buyer in a foreclosure sale becomes the absolute owner of the property purchased if it is not redeemed during the period of one year after the registration of the sale. As such, he is entitled to the possession of the said property and can demand it at any time following the consolidation of ownership in his name and the issuance to him of a new transfer certificate of title. The buyer can in fact demand possession of the land even

during the redemption period except that he has to post a bond in accordance with Section 7 of Act No. 3133 as amended. No such bond is required after the redemption period if the property is not redeemed. Possession of the land then becomes an absolute right of the purchaser as confirmed owner. Upon proper application and proof of title, the issuance of the writ of possession becomes a ministerial duty of the court.

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. There is neither legal ground nor reason of public policy precluding the court from ordering the sheriff in this case to yield possession of the property purchased at public auction where it appears that the judgment debtor is the one in possession thereof and no rights of third persons are involved.

This same ruling was made in *Rivera vs. Court of First Instance of Nueva Ecija*, 61 Phil. 201 (1935) (judicial foreclosure of mortgage) and *Republic vs. Nable*, G.R. No. L-4979, April 30, 1952 (execution sale).[5]

We therefore affirm and adopt the following ruling of the respondent court:

We are of the considered opinion that the finality of the order of respondent court dated March 6, 1985 recalling the writ of possession previously issued and dismissing the case did not divest the lower court of jurisdiction to entertain in subsequent petition for writ of possession. As aptly argued by petitioner, the land registration (LRC Case No. 145), which brought the property within the ambit of the Torrens system, has long become final and executory. The decree ordering the registration of the property under the Torrens system in that proceeding took place several years ago. The action for a writ of possession filed in the same land registration case is a mere post-judgment incident that is not subject to the rules of ordinary appeal. For how can a post-judgment incident in a land registration case be subject to the rules of ordinary appeal when the main special proceedings have already become final and executory and cannot be appealed?

x x x

If the purchaser at a sheriff's sale of real property is not obliged to bring a separate and independent suit for possession after the expiration of the one-year redemption period and after the issuance by the sheriff of the final certificate of sale, we find no cogent reason why the lower court should be divested of its jurisdiction to entertain a subsequent petition for writ of possession after the original writ was recalled and the period to appeal said order has expired, especially so that the legal bar (alleged injunction) has already been dissolved. We believe that the respondent court's order dated March 6, 1985 recalling the writ of possession it previously issued ordering the dismissal of the petition (LRC Case No. 145) should be construed, to say the least, as a dismissal without prejudice. In fact, respondent court basically anchored its order of dismissal on two grounds, namely:

1. the petition was pre-mature, and
2. the existence of an alleged injunction.

By virtue of the decision dated November 20, 1985 rendered by Judge Laggui in Civil Case No. 6565 previously quoted, the above-enumerated grounds for the order of dismissal of respondent judge ceased to exist. There is no longer any legal bar for the issuance of a subsequent writ of possession which petitioner is rightfully entitled to. Legal technicalities should be brushed aside to pave the way for the dispensation of substantial justice.

Accordingly, we agree that the second motion for reconsideration filed by IBAA should have been considered a new application for a writ of possession although it was not correctly captioned as such. It is the text and purpose and not the designation of a pleading that should control[6] lest a mere technicality deprive a party of a substantial right because of a fastidious obsession with formality. A contrary rule would forever deprive IBAA of the means

to possess and enjoy the property it had acquired in the foreclosure sale.

The new application for a writ of possession should have been granted, especially since the reason for the withdrawal of the earlier writ had already disappeared with the lifting of the writ of preliminary injunction in Civil Case No. 6565. As we held in *Philippine National Bank v. Adil*:^[7]

The right of the petitioner to the possession of the property is clearly unassailable. It is founded on its right of ownership. As the purchaser of the properties in the foreclosure sale, and to which the respective titles thereto have already been issued, petitioner's right over the property has become absolute, vesting upon him the right of possession over an enjoyment of the property which the Court must aid in effecting its delivery. After such delivery, the purchaser becomes the absolute owner of the property. As we said in *Tan Soo Huat vs. Ongwico*, the deed of conveyance entitled the purchaser to have and to hold the purchased property. This means, that the purchaser is entitled to go immediately upon the real property, and this it is the Sheriff's inescapable duty to place him in such possession.

The fact that Civil Case No. 6565 is on appeal is no impediment to the resolution of the case at bar, which deals only with the propriety of the issuance of the writ of possession. This decision is without prejudice to the disposition of the other case on the merits of the questions raised therein, which are different from the issue in this case.

WHEREFORE, the petition is DENIED, with costs against the petitioner. It is so ordered.

SO ORDERED.

Gancayco, Griño-Aquino, and Medialdea, JJ., concur.
Narvasa, (Chairman), no part. Prior professional relationship.

[1] Later Associate Justice of the Court of Appeals.

[2] Annex "E," Rollo, pp. 27-39.

[3] *Pindangan v. Dans*, L-14391, September 26, 1962; *Mejia v. Lucas*, 100 Phil. 277; *Tijam v. Sibonghanoy*, 23 SCRA 29; *Nieva v. Manila Banking Corp.*, L-30811, September 2, 1983; *Tejones v. Gironella*, 159 SCRA 100.

[4] *Tijam v. Sibonghanoy*, 23 SCRA 29.

[5] Rollo, p. 70.

[6] *Roa v. Sua*, L-23302, September 25, 1960; *Chacon Ent. v. CA*, 124 SCRA 784.

[7] 118 SCRA 110.

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