

RAFAEL BARICAN AND ARACELI ALEJO, PETITIONERS, VS. INTERMEDIATE APPELLATE COURT, AND DEVELOPMENT BANK OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 79906. June 20, 1988

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition for review of the decision of the then Intermediate Appellate Court which granted an alias writ of possession in favor of the respondent bank and set aside the order dated March 21, 1986 of the Regional Trial Court of Caloocan City, Branch 128 which denied the private respondent bank's application for the issuance of such-writ pending the resolution of a civil case before the court.

Spouses Antonio Regondola and Dominga Zabat obtained a loan from the respondent bank. As security for the payment of the loan, the Regondolas and the respondent bank entered into a contract of real estate mortgage.

For failure of the Regondolas to fulfill the terms of the contract, the respondent bank extra-judicially foreclosed the mortgage.

The mortgaged property covered by TCT No. 57677 (495811, Caloocan Register of Deeds) was then sold at a public auction sale conducted by the Assistant City Sheriff of Caloocan City.

The respondent bank was declared the highest bidder and the corresponding certificate of sale was registered on October 7, 1980.

The Regondola spouses failed to redeem the property within the one-year period of redemption. Hence, the title to the property was consolidated in the name of the respondent bank. The transfer certificate of title issued in the name of the mortgagor-spouses was later annulled and a new one (TCT No. 117068) was issued in favor of the private respondent.

On October 28, 1984, the respondent bank sold the property to Nicanor Reyes.

On October 5, 1985, the bank filed with the lower court a petition for issuance of a writ of possession.

On October 7, 1985, the lower court issued an order granting the issuance of a writ of possession over the foreclosed property including the buildings and improvements therein in favor of the respondent bank.

However, before the writ of possession could be implemented, petitioner-spouses Rafael Barican and Araceli Alejo filed a petition to stay its implementation. They opposed the writ of possession claiming that they are the real owners and actual possessors of the foreclosed property as evidenced by a deed of sale with assumption of mortgage they executed with spouses Regondolas.

The petitioner-spouses disclosed that they had actually filed a complaint for declaration of ownership over the foreclosed property and damages with preliminary injunction against the respondent bank and Nicanor Reyes with

the Regional Trial Court of Caloocan City, Branch 128. The case was docketed as Civil Case No. C-11232.

On October 16, 1985, the lower court issued an order to stay the writ of possession on the ground that the rights of the plaintiffs in the civil case (petitioner-spouses herein) would be prejudiced if the execution proceeds. Likewise, a petition ex-parte for the issuance of an alias writ of possession filed by the respondent bank was denied by the lower court in its order dated March 21, 1986.

Upon appeal the questioned March 21, 1986 order was set aside by the Court of Appeals. The appellate court ordered the lower court to issue the writ of possession in favor of the respondent bank.

Their motion for reconsideration of the appellate court's decision having been denied, the petitioners interposed the present petition.

In a resolution dated October 1, 1987, we issued a temporary restraining order enjoining the enforcement of the appellate court's decision.

The sole issue raised in this petition is whether or not the pendency of Civil Case No. C-11232 for ownership of the foreclosed property is a bar or legal impediment to the issuance of a writ of possession in favor of respondent bank, the highest bidder in the auction sale of the said foreclosed property.

Relying on Sections 7 and 8 of Act No. 3135, Section 4 of P.D. 385, and the cases of *De Los Angeles v. Court of Appeals*, et al. (60 SCRA 116); *De Gracia v. San Jose* (94 Phil. 623); *Marcelo Steel Corporation v. Court of Appeals* (54 SCRA 89); *IFC Service Leasing and Acceptance Corporation v. Nera* (19 SCRA 181); and *Philippine National Bank v. Adil* (118 SCRA 110), the appellate court ruled that the lower court was left with no discretion but to issue a writ of possession because the issuance of a writ of possession in favor of a purchaser in a foreclosure sale of a mortgaged property is a ministerial act of the court. More important, the appellate court mentioned Section 4 of Presidential Decree 385 which provides for the rights of government financial institutions as purchasers in extra-judicial foreclosure sales. It states:

"Section 4. As a result of foreclosure or any other legal proceedings wherein the properties of the debtor which are foreclosed, attached, or levied upon in satisfaction of a judgment are sold to a government financial institution, the said properties shall be placed in the possession and control of the financial institution concerned, with the assistance of the Armed Forces of the Philippines whenever necessary. The Petition for Writ of Possession shall be acted upon by the court within fifteen (15) days from the date of filing." which was interpreted by this Court in the case of *Philippine National Bank v. Adil* (supra) in the following manner:

"Pursuant to the above provision, it is mandatory for the court to place the government financial institution, which petitioner is, in the possession and control of the property. As stated, the said decree was enacted' in order to effect the early collection of delinquent loans from government financial institutions and enable them to continue effectively financing the development needs of the country¹ without being hampered by actions brought to the courts by borrowers." (at pp. 114-115)

The petitioners take exception to the application of Section 4, P.D. No. 385 and the cited cases because "there is a peculiar circumstance where the alias writ of possession could not be issued not only because of the present possession of the petitioners but also of the fact that the property in question was already sold to Nicanor Reyes by the respondent Development Bank of the Philippines."

In the instant case, the petition for the issuance of an alias writ of possession was set for hearing. During the hearing, the lower court discovered certain facts, among them: In Civil Case No. C-11232, the petitioner-spouses claim ownership of the foreclosed property against the respondent bank and Nicanor Reyes to whom the former sold the property by negotiated sale; the complaint alleged that the DBP knew the assumption of mortgage

between the mortgagors and the petitioner-spouses and the latter have paid to the respondent bank certain amounts to update the loan balances of the mortgagors and transfer and restructuring fees which payments are duly receipted; the petitioner-spouses were already in possession of the property since September 28, 1979 and long before the respondent bank sold the same property to respondent Nicanor Reyes on October 28, 1984; and the respondent bank never took physical possession of the property.

Under these circumstances, the obligation of a court to issue a writ of possession in favor of the purchaser in a foreclosure of mortgage case ceases to be ministerial.

The well-settled rule is that the purchaser in a foreclosure sale of a mortgaged property is entitled to a writ of possession and that upon an ex-parte petition of the purchaser, it is ministerial upon the court to issue such writ of possession in favor of the purchaser (*Banco Filipino Savings and Mortgage Bank v. Pardo*, 151 SCRA 481; *Banco Filipino Savings and Mortgage Bank v. Intermediate Appellate Court*, 142 SCRA 44; *Philippine National Bank v. Adil*, supra; *De los Angeles v. Court of Appeals, et al.*, supra; *De Gracia v. San Jose*, supra; and *IFC Service Leasing and Acceptance Corporation v. Nera*, supra).

However, the rule is not an unqualified one. As we stated in *IFC Service Leasing and Acceptance Corporation v. Nera* (supra) citing *Tan Soo Huat v. Ongwico* (63 Phil. 746):

"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." (Italics supplied) (See also *Banco Filipino Savings and Mortgage Bank v. Intermediate Appellate Court*, supra)

Section 4 of P.D. 385 does not apply in the instant case because the respondent bank already divested itself of ownership over the foreclosed property when it sold the same to respondent Nicanor Reyes. As early as 1979, the judgment debtor was no longer in possession. There is a pending civil case involving the rights of third parties. The bank accepted payments on the loan from the petitioners who had assumed the mortgage of the Regondola spouses.

We agree with the lower court's observations to the effect that:

"There is no question that 'it is ministerial upon the Court to issue a writ of possession in favor of the purchaser in a foreclosure sale of a mortgaged property x x x.' But under the circumstances in the instant case, the Court can not just ignore the claims of the plaintiffs in Civil Case No. 11232 who are in possession that they are the owners of the property in question without first ventilating this issue in a proper hearing of the case on its merits. Likewise, the mind of the Court can not rest at ease after finding that — why did the DBP take five years, after the property mortgaged was foreclosed on October 10, 1980, to file a petition for the issuance of a writ of possession only on August 16, 1985? When Nicanor Reyes bought the property on October 28, 1984, why did the DBP not place Reyes in physical possession of the property? And why did Reyes not take possession of the property? And considering further that the DBP knew that Rafael Barican and his wife are in possession of the property, which is deduced from the argument of counsel for DBP that the Baricans are possessors in bad faith, why then did the DBP not file a complaint of ejectment against them?" (p. 55, Rollo)

WHEREFORE, the instant petition is GRANTED. The questioned decision of the Court of Appeals is REVERSED and SET ASIDE. The order dated March 21, 1986 of the Regional Trial Court of Caloocan City, Branch 128 is REINSTATED. The temporary restraining order issued on October 1, 1987 is made permanent.

SO ORDERED.

Fernan (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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