

SPS. MIGUEL S. KHO AND JUANITA KHO, PETITIONERS, VS. COURT OF APPEALS AND BANCO FILIPINO, RESPONDENTS.

G.R. No. 83498. October 22, 1991

Ponente: PARAS, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-83498/>

PARAS, J.:

Petitioners are assailing the propriety of the lifting of the writ of preliminary injunction by respondent Court of Appeals[1] which writ was issued by Branches IX and XIV of the Regional Trial Court of Cebu City, alleging that in doing so, respondent Court acted with grave abuse of discretion amounting to lack of jurisdiction[2] and virtually preempted the lower court from determining the merits of the issues raised by the petitioners in Civil Case No. CEB-759 now pending before Branch XIV of the Regional Trial Court of Cebu City.[3]

The facts of the case are as follows: -

"On January 31, 1978, the spouses Kho (private respondents herein) constituted in favor of herein petitioner Banco Filipino a real estate mortgage over a parcel of land registered in the name of plaintiff Miguel Kho and covered by Transfer Certificate of Title No. 63021 of the Register of Deeds of Cebu City, located at Juan Luna St., Cebu City, with an area of 750.72 sq. meters, more or less, to guarantee a loan granted them by petitioner bank. The real estate mortgage underwent amendments on June 7, 1978, March 5, 1979 and finally, on September 24, 1980, when it was made to secure private respondents' obligation with the bank in the total amount of TWO MILLION EIGHT HUNDRED SIXTY NINE THOUSAND PESOS (P2,869,000.00) Philippine Currency, payable on or before September 29, 1995.

"After managing to pay the sum of P688,060.00, the Kho spouses defaulted in the payment of some amortizations. Hence, on May 13, 1982, Banco Filipino extrajudicially foreclosed the mortgage. As the sole and highest bidder in the auction sale, the petitioner bank purchased the mortgaged property for the sum of P4,153,865.47 covering the plaintiff's obligations, interests, penalties and attorney's fees as agreed in the mortgage contract. The certificate of sale was then duly registered on June 17, 1982."[4]

Counting one year from June 17, 1982, the petitioners had until June 17, 1983, within which to redeem the property. In the meantime, the foreclosed property was leased out to third parties and the rentals (fruits thereof) were remitted monthly by petitioners to respondent bank, being the purchaser in the extrajudicial foreclosure. The end of the redemption period was then fast approaching but still petitioners had not made any move to redeem the foreclosed property. Then just about ten (10) days before the end of the redemption period, on June 7, 1983 to be exact, petitioners filed with the Regional Trial Court of Cebu (raffled off to Branch IX) a complaint for: "Annulment of Specific Performance with Preliminary Injunction, etc." against Banco Filipino, The Provincial Sheriff of Cebu and the Register of Deeds of Cebu Province later docketed as Civil Case No. CEB-759 which action was actually for the annulment of the extrajudicial foreclosure of mortgage. The verified complaint of petitioners specifically prayed for:

"x x x the Honorable Court before judgment and after hearing to issue a writ of preliminary injunction restraining and enjoining the defendants jointly and severally from obtaining a writ of possession or a final

deed of conveyance over plaintiffs' land and restrain the defendants from registering the same; as well as restraining and enjoining the defendants from collecting any rentals of the properties of the plaintiffs." (p. 129, Rollo)

On November 4, 1983, Judge Candido C. Aguinaldo of Branch IX, Regional Trial Court, Cebu, granted the prayer of petitioners to which respondent bank strongly objected and in its Urgent Motion to Lift Injunction prayed, to wit: -

"x x x to forthwith lift the order of injunction dated 4 November 1983, and require plaintiffs to turn over to defendant bank all the income and rents they have received on the subject property during the redemption period up to and including the date of their actual remittance of the same.

"It is likewise prayed that the scheduled pre-trial conference on 17 May 1983 at 8:30 a.m. be cancelled and held in abeyance pending final determination of defendant bank's motion to lift injunction." (pp. 144-145, Rollo)

In the meantime, present counsel of record for respondent bank entered his appearance. Judge Aguinaldo claimed some relationship with him. Hence, the reraffle of the case to another sala, Branch XIV - presided over by Judge Juan Y. Reyes. After more than 5 months' series of extensions, particularly on October 26, 1984, the petitioners finally submitted their Memorandum in support of their opposition to the respondent bank's aforesated Motion to Lift Injunction. On April 30, 1985, respondent bank's motion was denied and a motion for reconsideration was thereafter immediately filed. While the motion for reconsideration was pending, Judge Reyes retired and again there was a reraffle of the case which resulted in its being assigned to Judge Meinrado P. Paredes, of RTC XIII who denied on April 29, 1987, respondent bank's aforesated motion for reconsideration.

Finally the three (3) above mentioned orders of November 4, 1983 (granting writ of injunction); April 30, 1985 (denying respondent bank's motion to lift injunction), and April 29, 1987 (denying respondent bank's motion for reconsideration) were all reversed by respondent Court in its decision dated February 17, 1988.

Petitioners then filed a motion for reconsideration on February 29, 1988 which was denied thru a Court of Appeals resolution dated March 17, 1988, hence, this petition dated March 25, 1988 with the following prayer -

"WHEREFORE, petitioners most respect-fully pray that the decision of respondent Court of Appeals dated February 17, 1988 be reversed and the Orders of the lower court dated November 4, 1983 and April 30, 1985 be restored and further, that preliminary restraining order and preliminary injunction be issued restraining and enjoining the defendants jointly and severally from obtaining a writ of possession or a final deed of conveyance over petitioners' land and to restrain the defendants from registering the same as well as restraining and enjoining the defendants from collecting any rentals of the properties of petitioners." (pp. 21-22, Rollo)

This petition is completely without merit.

The law and jurisprudence are clear that both during and after the period of redemption, the purchaser at the foreclosure sale is entitled as of right to a writ of possession, regardless of whether or not there is a pending suit for annulment of the mortgage or the foreclosure itself (without prejudice of course to the eventual outcome of said case). Hence, an injunction to prohibit the issuance of the writ of possession is entirely out of place (See Act 3135).

WHEREFORE, the instant petition is DENIED for lack of merit. The assailed decision of respondent Court of Appeals lifting the writ of preliminary injunction is hereby AFFIRMED. Let this case be REMANDED to the Regional Trial Court of Cebu City, Branch XIV for further proceedings on Civil Case CEB-759.

SO ORDERED.

Padilla and Regalado, JJ., concur.

Melencio-Herrera, J., (Chairman), on leave.

[1] Decision promulgated on February 17, 1988, penned by Associate Justice Alfredo L. Benipayo and concurred in by Associate Justices Jose C. Campos, Jr. and Ricardo J. Francisco.

[2] p. 9, Rollo

[3] p. 11, Rollo

[4] Decision of Court of Appeals dated February 17, 1988

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.