

BANCO DE ORO SAVINGS & MORTGAGE BANK, PETITIONER, VS. THE HONORABLE COURT OF APPEALS AND SPOUSES ABELARDO AND ALEGRIA NERY, RESPONDENTS.*G.R. No. 85448. February 21, 1990*

Ponente: MELENCIO-HERRERA, J.

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This Petition for Review on Certiorari seeks the nullification of the Resolutions of respondent Court of Appeals dated 22 September 1988 and 18 October 1988.[1] Those Orders enjoined the enforcement of the Decision of the Metropolitan Trial Court of Paranaque, Branch 78,[2] dated 11 June 1988, in three Ejectment Cases tried by it jointly, with herein petitioner, Banco de Oro Savings and Mortgage Bank (simply the Bank hereinafter), as plaintiff.

The records show that on 30 October 1978, the Bank granted a loan of Four Hundred Thousand Pesos (P400,000.00) to private respondents, the spouses Abelardo and Alegria Nery (the Nerys, for short), for the construction of a two-story building which loan was secured by a real estate mortgage. Because the Nerys defaulted in the payment of the amortizations due, the mortgaged property was sold at public auction on 16 February 1982, with the Bank as the highest bidder.

On 27 November 1983, the Bank consolidated title to the property after the Nerys had failed to redeem the same within the reglementary period. Eventually, TCT No. 74529 was issued in the Bank's name.

Notwithstanding, the Nerys did not vacate the premises. Instead, they requested the Bank for more time to repurchase, obligating themselves to remit monthly rentals or reasonable compensation for continued occupation of the premises on the ground that they had leased portions of the building to tenants.

But since neither the Nerys nor their tenants vacated the subject property nor paid reasonable compensation for the use thereof, the Bank instituted three separate Ejectment Suits against them before the Metropolitan Trial Court of Paranaque, Branch 78 (the MTC), on 26 October 1984.

In a Decision, dated 11 July 1988, the MTC ordered the Nerys, and all persons and entities claiming rights under them, to vacate the premises and pay fixed monthly amounts as reasonable compensation (hereinafter, the MTC Decision). Reconsideration sought by the Nerys was denied.

In the absence of any appeal or the posting of a supersedeas bond by the Nerys, the MTC granted the Bank's Motion for Immediate Execution.

On 12 August 1988, before the Regional Trial Court of Makati, Branch 60 (briefly, the RTC),[3] the Nerys filed a Petition for Certiorari with Temporary Restraining Order/Preliminary Injunction, assailing the jurisdiction of the MTC and asking the RTC to set aside the judgment rendered by the former. A Temporary Restraining Order was issued, but upon the lapse of the Order, the Sheriff of Paranaque proceeded to execute the MTC Decision by delivering to the Bank, on 5 September 1988, actual possession of the subject property. The Nerys deny any such

turnover, however.

On 3 September 1988, the RTC denied the Nery application for a Writ of Preliminary injunction on the ground that there was no showing that they had any right that merited protection.

This time, on 8 September 1988, the Nerys went to respondent Appellate Court on a "Petition for Mandamus and as Alternative Remedies, Certiorari, and Prohibition with Preliminary Injunction and/or Restraining Order," seeking to compel the RTC to resolve the matter of the issuance of Preliminary Injunction. On 30 September 1988, they filed an Amended and Supplemental Petition which, however, is not of record here.

In a Resolution, dated 12 September 1988, respondent Appellate Court[4] issued a Temporary Restraining Order enjoining the implementation of the MTC Decision in the Ejectment Suits. In another Resolution of 22 September 1988, the Appellate Court,[5] after hearing, found sufficient reasons to convert the Temporary Restraining Order into a Writ of Preliminary Injunction upon the filing of a bond by the Nerys in the amount of P5,000,00. Finally, in a Resolution, dated 18 October 1988,[6] the Appellate Court confirmed the Preliminary Injunction issued expressly enjoining the enforcement of the MTC Decision, dated 11 July 1988, in the Ejectment Suits.

Hence, this recourse to us by the Bank. On 2 August 1989, after an exchange of pleadings, we gave due course to the Petition and required the submittal of Memoranda. The last Memorandum was filed on 7 November 1989.

The Bank takes the position that respondent Appellate Court committed grave abuse of discretion in issuing the Writ of Preliminary Injunction in its Resolutions of 22 September 1988 and 18 October 1988 for the reason that the Nerys are no longer entitled to any injunctive relief inasmuch as the MTC Decision which had ordered their ejectment from the premises had become final by reason of their failure to appeal.

For their part, the Nerys submit that the MTC had no jurisdiction in the Ejectment Suits since those were filed more than one year after accrual of the Bank's cause of action and more importantly, that the proper remedy for the Bank to have taken as mortgagee was to obtain a Writ of Possession and not to have sued for ejectment. The Nerys further assail the legality of the foreclosure as premature having been effected before the Bank could release the full amount of the loan and for having been flawed with irregularities.

The decisive issue then is the propriety of the remedy of ejectment availed of by the Bank and the consequent jurisdiction of the MTC over the Ejectment Suits.

The MTC jurisdiction must be sustained. The Nerys maintain that the one-year period for bringing an action for ejectment under Section 1. Rule 70, must be reckoned from 16 February 1982, the date of the sale of the mortgaged property at public auction or up to 16 February 1983, but that since the Complaints were filed only on 5, 17 and 21 October 1984 respectively, they were way beyond one year.

The Nerys forget, however, that they had asked the Bank for a grace period within which to repurchase the mortgaged property and to be allowed to pay monthly rentals or reasonable compensation for the use of the premises. In fact, they did pay rentals for several months. Their continued stay in the property was thereby converted to one by tolerance or permission. "A person who occupies the land of another at the latter's tolerance or permission, without any contract between them, is necessarily bound by an implied promise that he will vacate upon demand failing which, a summary action for ejectment is the proper remedy against him" (*Dakudao v. Consolacion*, L-54573, 24 June 1983, 122 SCRA 877). The Nerys refused to vacate upon demand, the last of which was made by letter, dated 25 July 1984, as found by the Trial Court, and not 9 September 1983 as the Nerys allege. An ejectment suit, therefore, was proper, with the legally prescribed period to institute the same having been complied with.

Significantly, too, with the consolidation of title in the Bank, it had become the owner of the subject premises. As such, it could bring an action for ejectment to obtain possession and occupation. Thus, Section I, Rule 70 provides "an action for unlawful detainer may be brought by a landlord, vendor, vendee or other person against whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession x x x."

It is indeed, correct that in ordinary extra-judicial foreclosure cases, the mortgagee's remedy is to apply for a Writ of Possession. As already intimated, however, the stay of the Nerys in the premises had been converted to one by permission with a corresponding commitment to pay rentals. An implied lease was thereby created between the parties. "Where the question relates to the relation between landlord and tenant, the nature of the leased premises involved, the reasonableness of the rentals demanded, the right or lack of right of the tenant to continue occupying the premises against the will of the landlord, the applicability of the rental law, etc., a case for ejectment is proper" (Commander Realty, Inc., vs. Court of Appeals, L-77227, 9 May 1988, 161 SCRA 264). Notably, too, there were other tenants in the premises who were not privy to the foreclosure proceedings but had to be ejected as well.

We thus pronounce that the MTC Decision, dated 11 July 1988, had become final and executory by reason of failure of the Nerys to appeal. It should be recalled that, instead of appealing, the Nerys availed of a Petition for Certiorari with the Regional Trial Court of Makati on 12 August 1988 assailing the MTC jurisdiction and praying that its judgment be set aside (Rollo, p. 208). As Section 22 of BP 129 provides, however, "Regional Trial Courts shall exercise appellate jurisdiction over all cases decided by Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in their respective territorial jurisdictions." If a judgment of an inferior Court is sought to be reviewed, the remedy is an appeal to the Regional Trial Court, not the filing with that Court of a special civil action of Certiorari (Pan Realty Corp. v. Court of Appeals, et al., G.R. No. 47726, 23 November 1988, 167 SCRA 564). "Appeal, whether from an inferior Court or a Regional Trial Court is antithetical to the special civil action of certiorari" (Pozo, et al., vs. Judge Penaco, etc., G.R. No. 48302, 23 November 1988, 167 SCRA 577). It is likewise basic that "perfection of an appeal within the statutory or reglementary period is not only mandatory but jurisdictional. Failure to do so renders the questioned decision final and executory and deprives the appellate court of jurisdiction to alter the final judgment much less to entertain the appeal" (Eternal Gardens Memorial Park Corp., v. Court of Appeals, et al., G.R. No. 50054, 17 August 1988, 164 SCRA 421).

The Nerys posit, however, that Certiorari to the Regional Trial Court was proper because the heart of the controversy is the lack of jurisdiction of the MTC over the Ejectment Suits and is an issue that can be raised at any stage of the proceedings. True. As we have concluded previously, however, given the circumstances of the case, the MTC had properly assumed jurisdiction over these actions. That argument, therefore, has lost its moorings.

The further allegation of the Nerys in their Comment that the foreclosure sale was illegal because the mortgage was foreclosed even before the Bank had released the whole amount secured by the mortgage and that irregularities attended said sale (Rollo, p. 92) deserves no prolonged consideration being factual in nature added to the Trial Court finding that the records do not show any such flaws or irregularities. Notably, too, this matter was not even pleaded in the Answer of the Nerys in the Trial Court and as observed by it seems to be a mere afterthought (Rollo, p. 5). Further, if the Nerys believed that irregularities attended the foreclosure of the subject property, their remedy was to file an action for annulment of the foreclosure sale. Having failed to do so, they cannot evade the judgment rendered against them in the Ejectment Suits.

With the judgment in the Ejectment Suits having attained finality, execution in favor of the prevailing party, the Bank herein follows as a matter of course. The injunctive relief granted by respondent Appellate Court, therefore,

was uncalled for.

WHEREFORE, the instant Petition is GRANTED. The Resolutions of respondent Court of Appeals, dated 22 September 1988 and 18 October 1988, enjoining enforcement of the Decision of the Metropolitan Trial Court of Paranaque, Branch 78, dated 11 July 1988, are hereby SET ASIDE.

Costs against private respondents.

SO ORDERED.

Paras, Padilla, Sarmiento, and Regalado, JJ., concur.

[1] Per Justices Antonio M. Martinez (ponente), Lorna S. Lombos-de la Fuente and Cecilio L. Pe.

[2] Presided over by Judge Jose R. Sebastian.

[3] Judge Pedro N. Laggui, presiding.

[4] Per Justices Antonio M. Martinez (ponente), Lorna S. Lombos-de la Fuente and Cecilio L. Pe.

[5] *ibid.*

[6] *ibid.*

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