

UNITED COCONUT PLANTERS BANK, PETITIONER, VS. HON. LUIS R. REYES, IN HIS CAPACITY AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, BRANCH 22, 4TH JUDICIAL REGION, IMUS, CAVITE, R...

G.R. No. 95095. February 07, 1991

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

Does the denial of an ex parte motion for the issuance of a writ of possession filed by a purchaser at a foreclosure sale after the expiration of the redemption period constitute grave abuse of discretion by the lower court? This is the issue presented for resolution in this case.

The spouses Teodoro and Sonia Espiritu obtained credit accommodations amounting to TWO HUNDRED SIXTY THOUSAND PESOS (P260,000.00) from petitioner United Coconut Planters Bank. These credit accommodations were secured by real estate mortgages over four (4) parcels of land located at Kawit, Cavite owned by the Espiritu spouses.

The Espiritu spouses defaulted in the payment of their obligations so that the mortgage was extrajudicially foreclosed. At the public auction held on January 12, 1982, the subject properties were sold to petitioner which was issued a certificate of sale in its favor.

For failure of the spouses to redeem the foreclosed properties, petitioner consolidated its ownership over the same and secured Transfer Certificates Title Nos. T-154828, T-154835, T-154837 and T-154836 in its name.

On February 16, 1990, petitioner filed an ex parte motion[1] for the issuance of a writ of possession in LRC Case No. 598-90 before the Regional Trial Court of Imus, Cavite Br. 22 so that it may be placed in possession of the subject properties which the Espiritu spouses refused to deliver to petitioner and instead continued to occupy.

After hearing, the respondent judge Luis R. Reyes issued the now questioned order dated July 6, 1990[2] directing petitioner to file the proper petition making the Espiritu spouses proper respondents so that they may be summoned and that the court may exercise jurisdiction over them.

The motion for reconsideration[3] filed by petitioner was denied by respondent judge in an order dated August 14, 1990[4] for failure to comply with the requirements that a motion be under oath and that it be set for hearing and for the further reason that the court has not yet acquired jurisdiction over the subject matter of the case and over the parties.

On August 24, 1990, petitioner filed another motion for reconsideration, this time complying with the requirements of law as noted by the respondent judge in his previous order.[5]

On August 29, 1990, respondent judge denied the second motion for reconsideration for lack of merit.[6]

In this petition for certiorari, petitioner questions the denial of its ex-parte motion for issuance of writ for possession alleging grave abuse of discretion on the part of respondent judge.

Respondent judge filed his comment on the petition in compliance with the resolution of the Court dated October 8, 1990.

We find the petition meritorious.

Petitioner argues that Section 7 of Act No. 3135, as amended, the law which regulates extrajudicial foreclosure of mortgage, only requires that the motion for issuance of a writ of possession be ex parte. Respondent judge, on the other hand, avers that the proper petition should be filed in order that the court may acquire jurisdiction over the subject properties and the Espiritu spouses and in order that the constitutional requirements of due process are complied with.

Section 7[7] of Act 3135 allows the purchaser to take possession of the foreclosed properties during the period of redemption upon filing of an ex parte application and approval of a bond. In *De Gracia vs. San Jose*,^[8] cited by petitioner, the Court, expounding on the meaning of said Section 7, held-

"As may be seen, the law expressly authorizes the purchaser to petition for a writ of possession during the redemption period by filing an ex parte motion under oath for that purpose in the corresponding registration or cadastral proceeding in the case of property with Torrenns title, and upon the filing of such motion and the approval of corresponding bond, the law also in express terms directs the court to issue the order for a writ of possession. Under the legal provisions above copied, the order for a writ of possession issues as a matter of course upon filing of the proper motion and the approval of the corresponding bond. No discretion is left to the court. And any question regarding the regularity and validity of the sale (and the consequent cancellation of the writ) is left to be determined in a subsequent proceeding as outlined in section 8. Such question is not to be raised as a justification for opposing the issuance of the writ of possession, since, under the Act, the proceeding for this is ex parte."

It should be noted that said Section 7 contemplates a situation in which a writ of possession is sought during the redemption period. If a writ of possession is sought after the lapse of the redemption period with the mortgagor having failed to redeem the foreclosed properties, is an ex-parte motion sufficient for the issuance of such a writ?

This question has been answered in the affirmative in *IFC Service Leasing and Acceptance Corp. vs. Nera*,^[9] where the Court, rejecting the argument that the jurisdiction of the lower court to issue a writ of possession is limited only to the duration of the period of redemption and after the expiration of the period, the mortgagee's remedy is an ordinary action for recovery of possession in order to give the mortgagor an opportunity to be heard, ruled --

"The contention is without merit. The applicable provision of Act No. 3135 is Section 6 which provides that, in cases in which an extrajudicial sale is made, 'redemption shall be governed by the provisions of sections four hundred and sixty-four to four hundred and sixty-six, inclusive, of the Code of Civil Procedure in so far as those are not inconsistent with the provisions of this Act.' Sections 464-466 of the Code of Civil Procedure were superseded by Sections 25-27 and Section 31 of Rule 39 of the Rules of Court which in turn were replaced by Sections 29-31 and Section 35 of the Revised Rules of Court. Section 35 of Rule 39 of the Revised Rules of Court expressly states that 'if no redemption be made within twelve (12) months after the sale, the purchaser, or his assignee is entitled to a conveyance and possession of the property xxx. The possession of the property shall be given to the purchaser or last redemptioner by the officer unless a third party is actually holding the property adversely to the judgment debtor.'

Indeed, as this Court held in *Tan Soo Huat vs. Ongwico*, 63 Phil. 746, 749 (1936), --

"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.”

The Court further stated in *IFC Service Leasing and Acceptance Corp.* that if under Section 7 of Act No. 3135, the court has the power on the ex parte application of the purchaser to issue a writ of possession during the period of redemption, there is no reason why it should not also have the same power after expiration of that period, especially where, as in this case, the purchaser has already consolidated its ownership and has already secured new titles in its name.[10]

Indeed, respondent judge committed a grave abuse of discretion in denying the ex-parte motion filed by petitioner and instead requiring it to file another petition to include the Espiritu spouses as private respondents. Petitioner, as the purchaser in the foreclosure sale, has already obtained new titles over the subject properties which remained in the possession of the judgment debtors, the Espiritu spouses. There are also no rights of third persons involved. It was therefore ministerial upon the lower court to issue a writ of possession in favor of petitioner upon the filing of its ex-parte application.[11]

Respondent judge, however, contends that a proper petition is still necessary since petitioner did not file a bond. He claims that the *De Gracia* ruling cited by petitioner cannot apply in the present case since in *De Gracia*, the purchaser filed a bond for the protection of the landowner's rights.

In *De Gracia*, the filing and approval of a bond was necessary before a writ of possession could be issued by the court since possession was sought by the purchaser during the period of redemption, when the title to the subject property was still in the name of the judgment debtor. The bond is required to protect the rights of the judgment debtor so that he may be indemnified in case it be shown that the sale was made without violating the mortgage or without complying with the requirements of the law.[12] Thus, Section 8 of Act No. 3135 allows the debtor to petition that the sale be set aside and the writ of possession cancelled in the proceedings in which possession was requested not later than 30 days after the purchaser was given possession and if the court finds the complaint justified, the bond furnished by the person who obtained possession in accordance with Section 7 shall answer in whole or in part for any damage the debtor may have suffered. It is also observed that the bond required is in an amount equivalent to the use of the property for 12 months presumably to cover the one-year redemption period. It can be clearly seen that the bond is only necessary when the purchaser seeks a writ of possession during the redemption period to insure the protection of the rights of the judgment debtor in the event that the sale is set aside. But where the redemption period has already expired and a new title has been issued in the name of the purchaser, his right over the property has become absolute so that he has the right to be put in possession thereof which the court must aid in effecting.[13] To impose a bond requirement upon the purchaser who is now the owner of the foreclosed properties would be unreasonable if not illogical for if there are any rights to be protected, they are those of the purchaser who as owner has a superior right over said properties as against all other persons. In fact, under Section 35 of Rule 39 of the Revised Rules of Court, the purchaser or his assignee is entitled to a conveyance and possession of the property if no redemption made within 12 months after the sale. There is nothing in the law that may be read to mean that a bond should first be filed by the purchaser before he may be given possession of the property. The rule, therefore, is that after the expiration of the redemption period, the purchaser at a foreclosure sale is entitled to a writ of possession upon filing of an ex parte application without the necessity of filing a bond.

WHEREFORE, the petition is hereby GRANTED. The orders of the trial court dated July 6, 1990, August 14,

1990 and August 29, 1990 are set aside. Respondent judge is hereby ordered to issue a writ of possession in favor of petitioner. No costs.

SO ORDERED.

Narvasa, (Chairman), Cruz, Griño-Aquino, and Medialdea, JJ., concur.

[1] Page 11, rollo.

[2] Page 29, rollo.

[3] Page 30, rollo.

[4] Page 33, rollo.

[5] Page 34, rollo.

[6] Page 38, rollo.

[7] SEC. 7. 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 violating the mortgage or without complying with the requirements of this Act. Such petition shall be made under oath and filed in form of an ex parte motion in the registration or cadastral proceedings if the property is registered, or in special proceedings in the case of property registered under the Mortgage Law or under section one hundred and ninety-four of the Administrative Code, or of any other real property encumbered with a mortgage duly registered in the office of any register of deeds in accordance with any existing law, and in each case the clerk of court shall, upon the filing of such petition, collect the fees specified in paragraph eleven of section one hundred and fourteen of Act Numbered Four hundred and ninety-six, as amended by Act Numbered Twenty-eight hundred and sixty-six, and the court shall, upon approval of the bond, order that a writ of possession issue, addressed to the sheriff of the province in which the property is situated, who shall execute said order immediately. (Underscoring supplied)

[8] 94 Phil 623 (1954) cited in *Marcelo Steel Corp. vs. Court of Appeals*, 54 SCRA 89, 97 (1973) and in *Banco Filipino Savings and Mortgage Bank vs. Intermediate Appellate Court*, 142 SCRA 44 (1986).

[9] 19 SCRA 181 (1967), cited in *Philippine National Bank vs. Adil*, 118 SCRA 110 (1982); *Barican vs. Intermediate Appellate Court*, 162 SCRA 359 (1988).

[10] *Ibid*; *Banco Filipino Savings and Mortgage Bank vs. Intermediate Appellate Court*, *supra*.

[11] *Barican vs. Intermediate Appellate Court*, *supra*; *Banco Filipino Savings and Mortgage Bank vs. Pardo*, 151 SCRA 481 (1987); *Banco Filipino Savings and Mortgage Bank vs. Intermediate Appellate Court*, *supra*; *Philippine National Bank vs. Adil*, *supra*; *De los Angeles vs. Court of Appeals, et al*, 60 SCRA 116 (1974); *IFC Service Leasing and Acceptance Corp. vs. Nera*, *supra*; *De Gracia vs. San Jose*, *supra*.

[12] Section 7, Act No. 3135.

[13] *Philippine National Bank vs. Adil*, *supra*.

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