

## FIRST DIVISION

[ G.R. NO. 161028, January 31, 2005 ]

**TERESITA V. IDOLOR, PETITIONER, VS. HON. COURT OF APPEALS, SPOUSES GUMERSINDO DE GUZMAN AND ILUMINADA DE GUZMAN AND HON. JOSE G. PINEDA, PRESIDING JUDGE OF REGIONAL TRIAL COURT, NATIONAL CAPITAL JUDICIAL REGION, BRANCH 220, QUEZON CITY, RESPONDENTS.**

### **DECISION**

**YNARES-SANTIAGO, J.:**

This petition for review on certiorari assails the September 1, 2003 decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. SP No. 72494 which reversed the May 27, 2002 order of the Regional Trial Court of Quezon City, Branch 220, in Civil Case No. Q-98-34728, denying respondent-spouses *Motion for Immediate Issuance of Writ of Possession*.

Petitioner Teresita V. Idolor obtained a loan from respondent-spouses Gumersindo and Iluminada De Guzman secured by a real estate mortgage over a property covered by Transfer Certificate of Title No. 25659.<sup>[2]</sup>

Upon default by petitioner in the payment of her obligation, respondent-spouses instituted extra-judicial foreclosure proceedings against the real estate mortgage. During the auction sale, respondent-spouses emerged as the highest bidder and were issued a Certificate of Sale.<sup>[3]</sup>

On June 25, 1998, petitioner filed with the Regional Trial Court of Quezon City, Branch 220, a complaint for annulment of the Certificate of Sale with prayer for the issuance of a temporary restraining order and a writ of preliminary injunction. The case was docketed as Civil Case No. Q-98-34728.

The trial court issued a writ of preliminary injunction, however, the Court of Appeals in a petition for certiorari filed by respondent-spouses, annulled the same for having been issued with grave abuse of discretion. We affirmed said decision of the appellate court in *Idolor v. Court of Appeals*.<sup>[4]</sup>

The ownership over the subject property having been consolidated in their name, respondent-spouses De Guzman moved for the issuance of a writ of possession with the Regional Trial Court where the case for the annulment of the Certificate of Sale was pending.<sup>[5]</sup> On May 27, 2002, the trial court denied the motion, ruling that the "the lifting of the writ of preliminary injunction does not ipso facto entitle defendant De Guzman to the issuance of a writ of possession over the property in question. It only allows the defendant Sheriff to issue a final deed of sale and confirmation sale and the defendant De Guzman to consolidate the ownership/title over the subject property in his name."<sup>[6]</sup>

In a petition for certiorari before the Court of Appeals, the appellate court found that the trial court gravely abused its discretion in denying the motion for the issuance of the *"writ of possession to the mortgagee or the winning bidder is a ministerial function of the court and that the pendency of an action questioning the validity of a mortgage cannot bar the issuance of the writ of possession after title to the property has been consolidated in the mortgagee."*<sup>[7]</sup> Hence, it reversed and set aside the May 27, 2002 order of the trial court.

The following issues are raised for our consideration:

- A. WHETHER OR NOT THE COURT A QUO HAS JURISDICTION ON THE MOTION OF THE MORTGAGEE TO APPLY FOR A WRIT OF POSSESSION NOTWITHSTANDING NON-PAYMENT OF DOCKET FEES;
- B. WHETHER OR NOT THE MORTGAGEE, BY MERE MOTION, NOT BY A PETITION, MAY APPLY FOR A WRIT OF POSSESSION IN THE SAME CASE FOR ANNULMENT OF THE SHERIFF'S CERTIFICATE OF SALE OF WHICH HE IS A DEFENDANT.<sup>[8]</sup>

A writ of possession is an order whereby the sheriff is commanded to place a person in possession of a real or personal property.<sup>[9]</sup> It may be issued under the following instances: (1) land registration proceedings under Sec. 17 of Act 496; (2) judicial foreclosure, provided the debtor is in possession of the mortgaged realty and no third person, not a party to the foreclosure suit, had intervened; and (3) extrajudicial foreclosure of a real estate mortgage under Sec. 7 of Act 3135 as amended by Act 4118,<sup>[10]</sup> to which the present case falls.

Section 7, Act 3135, as amended by Act 4118, provides:

SECTION 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 the 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.

Under the provision cited above, the purchaser in a foreclosure sale may apply for a writ of possession during the redemption period by filing for that purpose an *ex parte* motion under oath, in the corresponding registration or cadastral proceeding in the case of a property with torrens title. Upon the filing of such motion and the approval of the corresponding bond, the court is expressly directed to issue the writ.

[11]

Upon the expiration of the redemption period, the right of the purchaser to the possession of the foreclosed property becomes absolute. The basis of this right to possession is the purchaser's ownership of the property. Mere filing of an *ex parte* motion for the issuance of the writ of possession would suffice, and the bond required is no longer necessary, since possession becomes an absolute right of the purchaser as the confirmed owner.

[12]

In this case, respondent-spouses acquired an absolute right over the property upon the failure of petitioner to exercise her right of redemption and upon the consolidation of the title in their name.

The pendency of the case for the annulment of the Certificate of Sale is not a bar to the issuance of the writ of possession. Upon the filing of the motion, the trial court has no discretion to deny the same, thus:

This Court has consistently held that the duty of the trial court to grant a writ of possession is ministerial. Such writ issues as a matter of course upon the filing of the proper motion and the approval of the corresponding bond. No discretion is left to the trial court. Any question regarding the regularity and validity of the sale, as well as the consequent cancellation of the writ, is to be determined in a subsequent proceeding as outlined in Section 8 of Act 3135. Such question cannot be raised to oppose the issuance of the writ, since the proceeding is *ex parte*. The recourse is available even before the expiration of the redemption period provided by law and the Rules of Court.

[13]

The judge to whom an application for writ of possession is filed need not look into the validity of the mortgage or the manner of its foreclosure. As a rule, after the consolidation of title in the buyer's name, for failure of the mortgagor to redeem, the writ of possession becomes a matter of right. Its issuance to a purchaser in an extrajudicial foreclosure is merely a ministerial function. As such, the court neither exercises its official discretion nor judgment.

[14]

Any question regarding the validity of the mortgage or its foreclosure cannot be a legal ground for refusing the issuance of a writ of possession. Regardless of whether or not there is a pending suit for annulment of the mortgage or the foreclosure itself, the purchaser is entitled to a writ of possession, without prejudice of course to the eventual outcome of said case.

[15]

Contrary to petitioner's assertion, the Regional Trial Court of Quezon City has jurisdiction to act on respondent's motion for writ of possession. Section 7, Act 3135, as amended, is clear that in any sale made under its provisions, "*the purchaser may petition the Court ... of the province or place where the property or any part thereof is situated...*" Since the property subject of this controversy is in Quezon City, then the city's Regional Trial Court should rightly take cognizance of the case.