

SECOND DIVISION

[G.R. NO. 155673, January 14, 2005]

**SPOUSES SALVADOR F. DE VERA AND FELIZA V. DE VERA,
PETITIONERS, VS. HON. GUILLERMO P. AGLORO, PRESIDING
JUDGE, RTC – BRANCH 83 MALOLOS, BULACAN AND BPI FAMILY
SAVINGS BANK, INC., RESPONDENTS.**

DECISION

CALLEJO, SR., J.:

This is a petition for review on certiorari with urgent application for temporary restraining order/preliminary injunction of the March 22, 2002 Decision^[1] of the Court of Appeals (CA) in CA-G.R. SP No. 67164.

On March 25, 1996, the Spouses Salvador F. De Vera and Feliza V. De Vera secured a loan in the amount of P1,200,000.00 from the BPI Family Savings Bank, Inc. (the Bank, for brevity).^[2] To secure the payment thereof, the Spouses executed a Real Estate Mortgage over their property located in Guiguinto, Bulacan, with an area of 232 square meters covered by Transfer Certificate of Title (TCT) No. T-85716.^[3] When the Spouses De Vera defaulted in the payment of the balance of their loan amounting to P1,091,484.01 and failed to pay despite demands of the Bank, the latter filed a petition^[4] with the *ex-officio* sheriff of the Regional Trial Court (RTC) of Malolos, Bulacan, for the extrajudicial foreclosure of the real estate mortgage. At the public auction scheduled on October 9, 1998, the Bank was declared the highest bidder for the property. On October 18, 1998, the Sheriff executed a certificate of sale^[5] in favor of the Bank. On November 18, 1999, the Bank filed in the Office of the Register of Deeds an affidavit for the consolidation of its ownership over the property.^[6] Thus, on December 1, 1999, TCT No. T-133862 was issued in the name of the Bank.^[7]

On February 11, 2000, the Spouses De Vera filed a Complaint^[8] for the nullification of the real estate mortgage against the Bank and the Sheriff with the RTC of Malolos, Bulacan, as well as the extrajudicial sale of the property at public auction. The Spouses prayed that, after due proceedings, judgment be rendered in their favor as follows:

WHEREFORE, it is most respectfully prayed that, after hearing, judgment be rendered:

1. Setting aside the Mortgage Loan Agreement and any/all contracts, accessory or subsidiary thereto;
2. Setting aside the foreclosure proceedings and the issuance of new title to the defendant Bank;

3. Allowing the plaintiffs to pay to the defendant Bank what is legal, just and equitable under the premises;
4. Sentencing defendant Bank to pay plaintiffs the following items of damages:
 - a. At least P500,000.00 as actual or compensatory damages;
 - b. At least P100,000.00 as moral damages;
 - c. At least P100,000.00 as exemplary damages;
 - d. 25% of total recovery as attorney's fees;
 - e. Cost of suit.^[9]

The case was docketed as Civil Case No. 109-M-2000 and was raffled to Branch 83 of the court. On February 23, 2000, the Bank filed an *Ex Parte* Petition for Writ of Possession with the RTC of Malolos, Bulacan, docketed as LRC Case No. P-97-2000. The case was raffled to Branch 83 of the court. The Bank impleaded the Spouses as respondents and prayed that after an *ex parte* hearing, an order be issued as follows:

1. Granting petitioner a writ of possession over the properties covered by TCT No. T-133862 of the Registry of Deeds of Bulacan, together with all the improvements thereon; and
2. Ordering the Sheriff or any of his duly authorized deputies to immediately place petitioner in possession thereof.
3. Petitioner further prays for such other reliefs as may be deemed just and equitable under the premises.^[10]

The trial court set the petition for hearing at 8:30 a.m. of August 16, 2000 at the Building of the *Bulwagan ng Katarungan*, Provincial Capitol Compound in Malolos, Bulacan.^[11]

When the petition was called for hearing on August 16, 2000, no oppositor appeared. Forthwith, the trial court authorized its Branch Clerk of Court to receive the evidence of the Bank *ex parte*,^[12] and the Bank adduced its testimonial and documentary evidence *ex parte* on August 28, 2000.

On September 8, 2000, the Spouses De Vera filed in LRC Case No. P-97-2000 an Urgent Motion to Suspend Proceedings to await the resolution of Civil Case No. 109-M-2000 or for the consolidation of the two cases. The Spouses cited the rulings of this Court in *Barican v. IAC*^[13] and *Sulit v. Court of Appeals*.^[14] Opposing the motion, the Bank alleged that the pendency of Civil Case No. 109-M-2000 was not a bar to the petition for a writ of possession because the issuance of the said writ was ministerial on the part of the trial court. The petitioner cited the rulings of this Court in *Ong v. Court of Appeals*^[15] and *Vaca v. Court of Appeals*.^[16]

In an Order^[17] dated February 13, 2001, the trial court denied the motion of the Spouses. Citing the case of *Vda. de Zaballero v. CA*,^[18] the trial court ruled that the purchaser of the foreclosed property, upon *ex parte* application and the posting of

the required bond, has the right to acquire possession of the foreclosed property during the 12-month redemption period. According to the trial court, this is sanctioned under Section 7 of Act No. 3135, as amended by Act No. 4118. The trial court also declared that considering that the redemption period had already expired, the Bank as purchaser, can, and with more reason, demand for a writ of possession.

The trial court emphasized that it is its ministerial duty to issue the writ of possession in favor of a purchaser at public auction, and that such duty could not be defeated by the pendency of a civil case, in this instance Civil Case No. 109-M-2000. [19]

A motion for reconsideration was filed by the Spouses De Vera which was denied in an Order^[20] dated September 7, 2001. The trial court cited the case of *Banco Filipino Savings and Mortgage Bank v. IAC*,^[21] which reiterated the rule that a purchaser in a foreclosed sale of mortgaged property is entitled to a writ of possession and that upon an *ex parte* petition of the purchaser, it is ministerial upon the trial court to issue such writ in the latter's favor. It added that the pendency of a separate civil action questioning the validity of the mortgage or its foreclosure cannot be a legal ground for refusing the issuance of the writ of possession.

Aggrieved, the Spouses De Vera filed a petition for certiorari and mandamus with temporary restraining order and writ of preliminary injunction before the CA docketed as CA-G.R. SP No. 67164. Therein, they alleged that:

A.

PUBLIC RESPONDENT GRAVELY ABUSED HIS DISCRETION IN NOT SUSPENDING THE PETITION FOR WRIT OF POSSESSION DESPITE THE PENDENCY OF CIVIL CASE NO. 109-M-2000, WHICH IS A VIRTUAL REFUSAL TO PERFORM A BOUNDEN DUTY ENJOINED BY LAW AND JURISPRUDENCE, TENDING TO RENDER SAID CASE MOOT AND ACADEMIC, AND EXPOSING THE PETITIONERS TO GREAT AND IRREPARABLE INJURIES AS THEY STAND TO BE OUSTED FROM THEIR HOUSE AND LOT.

B.

PUBLIC RESPONDENT GRAVELY ABUSED HIS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DENYING PETITIONERS' MOTION FOR RECONSIDERATION DESPITE CLEAR GROUND TO RECONSIDER THE ORDER DATED FEBRUARY 11, 2001.

The Bank posited that Section 7 of Act No. 3135, as amended by Act No. 4118, authorizes it to obtain a writ of possession by filing a petition under oath in the registration or cadastral proceedings in the form of an *ex parte* motion. It further emphasized that the issuance of a writ of possession is a ministerial duty of the trial court, as held in *Spouses Ong v. Court of Appeals*.^[22]

On March 22, 2002, the CA rendered a decision denying due course to and dismissing the petition. The dispositive portion reads:

WHEREFORE, premises considered, the present petition is hereby DENIED DUE COURSE and accordingly DISMISSED, for lack of merit.^[23]

The CA ruled that the respondent judge did not act with grave abuse of discretion when he denied the petitioners' motion to suspend proceedings. It reasoned that since the subject parcel of land (with all its improvements) was not redeemed within one (1) year from the registration of the extrajudicial foreclosure sale, it follows that the bank, as purchaser thereof, acquired an absolute right to the writ of possession. It emphasized that the land registration court has the ministerial duty to issue the writ of possession upon mere motion, conformably to Section 7, Act No. 3135, as amended. Thus, the CA found that the Spouses De Vera failed to show that the injunctive relief prayed for was warranted.

The Spouses filed a motion for reconsideration which the appellate court denied in a Resolution^[24] dated October 15, 2002.

The Spouses forthwith filed their petition for review on certiorari under Rule 45 of the Rules of Court assailing the decision and the October 15, 2002 Resolution of the CA, asserting that:

A. THE COURT OF APPEALS ERRED IN NOT SUSPENDING THE PROCEEDINGS IN LRC CASE NO. N-3507 BECAUSE OF THE PENDENCY OF CIVIL CASE NO. 109-M-2000 FILED BY PETITIONERS SEEKING THE NULLITY, NOT ONLY OF THE FORECLOSURE AND AUCTION SALE, BUT ALSO OF THE MORTGAGE ITSELF.^[25]

B. THE RESPONDENT JUDGE SHOULD [HAVE] CONSOLIDATED THE P-97-2000 LRC CASE NO. 3507 WITH CIVIL CASE NO. 109-M-2000 (BRANCH 83, RTC, BULACAN).^[26]

The petition has no merit.

Section 6 of Act No. 3135^[27] provides that the mortgagor or his successor-in-interest may redeem the foreclosed property within one (1) year from the registration of the sale with the Register of Deeds. Under Section 7^[28] of the law, if the mortgagor fails to redeem the property, the buyer at public auction may file, with the RTC in the province or place where the property or portion thereof is located, an *ex parte* motion for the issuance of a writ of possession within one (1) year from the registration of the Sheriff's Certificate of Sale, and the court shall grant the said motion upon the petitioner's posting a bond in an amount equivalent to the use of the property for a period of twelve (12) months. On the strength of the writ of possession, the Sheriff is duty-bound to place the buyer at public auction in actual possession of the foreclosed property.^[29] After the one-year period, the mortgagor loses all interest over it.^[30] The purchaser, who has a right to possession that extends after the expiration of the redemption period, becomes the absolute owner of the property when no redemption is made.^[31] Thus, the bond required under Section 7 of Act No. 3135 is no longer needed. The possession of land becomes an absolute right of the purchaser as confirmed owner.^[32] The purchaser can demand possession at any time following the consolidation of ownership in his name and the issuance to him of a new transfer certificate of title. After the consolidation of title in the buyer's name for failure of the mortgagor to redeem the

property, the writ of possession becomes a matter of right. Its issuance to a purchaser in an extrajudicial foreclosure sale is merely a ministerial function.^[33]

In the present case, the petitioners-mortgagors failed to redeem the property within one (1) year from the registration of the Sheriff's Certificate of Sale with the Register of Deeds. The respondent, being the purchaser of the property at public auction, thus, had the right to file an *ex parte* motion for the issuance of a writ of possession; and considering that it was its ministerial duty to do so, the trial court had to grant the motion and to thereafter issue the writ of possession.

The bare fact that the petitioners were impleaded in the *ex parte* petition for a writ of possession filed by the respondent did not alter the summary nature of the proceedings in Act No. 3135. Indeed, there was no need for the respondent to implead the petitioners as parties-respondents in its petition with the RTC. Hence, the petitioners cannot claim that they were denied due process when the RTC took cognizance of the respondent's petition without prior service of copies of the petition and of the notice of hearing thereof on them.

Neither was there a need for the court to suspend the proceedings merely and solely because the petitioners filed a complaint in the RTC for the nullification of the real estate mortgage, the sale at public auction and the Sheriff's Certificate of Sale issued in favor of the respondent.

First. An *ex parte* petition for the issuance of a possessory writ under Section 7 of Act No. 3135 is not, strictly speaking, a "judicial process" as contemplated in Article 433 of the Civil Code.^[34] It is a judicial proceeding for the enforcement of one's right of possession as purchaser in a foreclosure sale. It is not an ordinary suit filed in court, by which one party "sues another for the enforcement of a wrong or protection of a right, or the prevention or redress of a wrong." It is a non-litigious proceeding authorized in an extrajudicial foreclosure of mortgage pursuant to Act No. 3135, as amended.^[35] It is brought for the benefit of one party only, and without notice to, or consent by any person adversely interested.^[36] It is a proceeding where the relief is granted without an opportunity for the person against whom the relief is sought to be heard.^[37] No notice is needed to be served upon persons interested in the subject property. Hence, there is no necessity of giving notice to the petitioners since they had already lost all their interests in the property when they failed to redeem the same.^[38]

Second. As a rule, any question regarding the validity of the mortgage or its foreclosure cannot be a legal ground for refusing the issuance of a writ of execution.^[39] The right of the purchaser to have possession of the subject property would not be defeated notwithstanding the pendency of a civil case seeking the annulment of the mortgage or of the extrajudicial foreclosure.^[40] Indeed, under Section 8 of Act No. 3135,^[41] even if the mortgagor files a petition assailing the writ of possession granted to the buyer and the sale at public auction within thirty (30) days from the issuance of a writ of possession in favor of the buyer at public auction of the property, and the court denies the same, the buyer may appeal the order of denial. However, the buyer at public auction remains in possession of the property pending resolution of the appeal. We have consistently ruled that it is the ministerial duty of the court to issue writ of possession in favor of the purchaser in a foreclosure sale.