

FIRST DIVISION

[G.R. No. 197797, August 09, 2017]

HEIRS OF JOSE PEÑAFLOR, NAMELY: JOSE PEÑAFLOR, JR. AND VIRGINIA P. AGATEP, REPRESENTED BY JESSICA P. AGATEP, PETITIONERS, V. HEIRS OF ARTEMIO AND LYDIA DELA CRUZ, NAMELY: MARILOU, JULIET, ROMEO, RYAN, AND ARIEL, ALL SURNAMED DELA CRUZ, RESPONDENTS.

D E C I S I O N

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*^[1] are the Decision^[2] dated February 18, 2011 and the Resolution^[3] dated July 8, 2011 of the Court of Appeals (CA) in CA-G.R. SP No. 110392, which annulled and set aside the Writ of Possession^[4] dated June 27, 2008 and Notice to Vacate^[5] dated June 18, 2009 issued by the Regional Trial Court of Olongapo City, Branch 72 in Other Case No. 38-0-93, thereby reinstating herein respondents heirs of Artemio and Lydia dela Cruz, namely: Marilou, Juliet, Romeo, Ryan, and Ariel, all surnamed dela Cruz (respondents), to the possession of the subject property.

The Facts

Respondents are the successors-in-interest of the late Artemio dela Cruz (Artemio), who is the son of Nicolasa dela Cruz, the original owner of a parcel of land situated at No. 11, Ifugao St., Brgy. Barretto, Olongapo City, including a two-storey building erected thereon (subject property).^[6]

On April 15, 1991, Nicolasa authorized her daughter, Carmelita C. Guanga (Carmelita), Artemio's sister, to mortgage^[7] the subject property to Jose R. Penaflor (Penaflor), the predecessor-in-interest of herein petitioners, Jose Peñaflor, Jr. and Virginia P. Agatep (represented by Jessica P. Agatep; collectively, petitioners) in order to secure a loan in the amount of P112,000.00.^[8] As Nicolasa failed to settle her loan obligation when it fell due, Peñaflor filed an application for extra-judicial foreclosure of mortgage^[9] before the Regional Trial Court of Olongapo City, Branch 72 (RTC), docketed as Case No. 07-0-91.^[10] After the requirements of posting, notices, and publication were complied with, the subject property was sold at a public auction, where Peñaflor emerged as the highest bidder.^[11] A Certificate of Sale^[12] was thus issued in his favor. The period of redemption expired without the subject property being redeemed; hence, a Final Bill of Sale^[13] was issued and registered in Peñaflor's name. Thereafter, the latter executed an Affidavit of Consolidation of Ownership.^[14] This notwithstanding, Nicolasa persisted in her occupancy of the subject property and refused to deliver possession to Peñaflor.^[15]

The RTC Proceedings

Seeking to enforce his right to possess the subject property, Peñafior filed a petition for the *ex parte* issuance of a writ of possession^[16] before the RTC, docketed as Other Case No. 38-0-93.^[17] On November 19, 1993, the RTC granted^[18] the petition for the issuance of a writ of possession. Nicolasa and Carmelita did not appeal the decision;^[19] thus, the same lapsed into finality.^[20]

However, the writ of possession was not enforced as Artemio filed a complaint for annulment of judgment^[21] before the same trial court, docketed as Civil Case No. 15-0-94 (annulment of judgment case), claiming to be the lawful owner and possessor of the subject property even prior to the mortgage.^[22] Artemio's complaint was eventually dismissed without prejudice on the ground of lack of jurisdiction.^[23]

In April 1998 (and thus after the mortgage of the subject property in April 1991), Artemio filed a separate complaint for ejectment against Carmelita before the Municipal Trial Court in Cities of Olongapo City, Branch 5 (MTCC), docketed as Civil Case No. 4065 (ejectment case).^[24] In support of his complaint, he submitted: (1) Miscellaneous Sales Application No. (1-4) 3407 filed with the Bureau of Lands, Olongapo City; (2) Deeds of Real Estate Mortgage signed by Artemio, mortgaging the said property to one "Rosita Bonilla"; and (3) Certifications attesting that he had declared the subject property in his name for taxation purposes.^[25] Also, he submitted a notarized deed dated May 3, 1989 denominated as "Waiver and Transfer of Possessory Rights"^[26] (May 3, 1989 Waiver) executed by Nicolasa, waiving and transferring all her rights and interests over the subject property in favor of Artemio.^[27] The MTCC granted Artemio's ejectment complaint against Carmelita, which was eventually affirmed by the Court in G.R. No. 150187.^[28]

In the meantime, the proceedings in Other Case No. 38-0-93 continued. On June 27, 2008, the RTC issued an Amended Order^[29] granting Peñafior's application for a writ of possession anew.^[30] On even date, the RTC issued the Writ of Possession.^[31] Thereafter, the RTC issued a Notice to Vacate^[32] dated July 11, 2008, ordering Artemio to vacate the subject property.^[33] However, on July 23, 2008, Artemio and his wife, Lydia dela Cruz (Sps. dela Cruz), filed a motion to quash the writ of possession and notice to vacate,^[34] claiming that the said writ could not be enforced against them as they are strangers to Other Case No. 38-0-93 who are holding the subject property adversely to the judgment obligor,^[35] *i.e.*, Nicolasa. Artemio's siblings, Sotero, Mario, and Clarita, all surnamed dela Cruz, and Charlie Guanga (Carmelita's son)^[36] likewise filed separate motions to quash the aforesaid writ and notice, claiming their rights over the subject property.^[37] Their motions were, however, denied by the RTC in an Order^[38] dated December 5, 2008. Consequently, Sotero, Mario, and Charlie filed a joint motion for reconsideration^[39] of the said Order, which was likewise denied by the RTC.^[40] Subsequently, the RTC issued another Notice to Vacate^[41] dated June 18, 2009, ordering the children of Nicolasa to vacate the subject property. Said motions having been denied, herein respondents, in substitution of their parents, filed another motion^[42] praying that the implementation of the writ of possession be held in abeyance as they are third persons in actual possession of the subject property who are asserting rights adverse to the judgment obligor.^[43] The RTC likewise denied respondents' motion in

an Order^[44] dated August 14, 2009; hence, prompting them to elevate this case to the CA via a petition for *certiorari*,^[45] docketed as CA-G.R. SP No. 110392.

The CA Ruling

In a Decision^[46] dated February 18, 2011, the CA annulled and set aside the writ of possession and notice to vacate issued by the RTC.^[47] It held that respondents are holding the subject property adverse to Nicolasa, the judgment obligor.^[48] As basis, it pointed out that the evidence submitted by Artemio in the ejectment case, all indicate that he was claiming ownership of the subject property, which was in his possession at that time.^[49] Further, the CA gave credence to the May 3, 1989 Waiver, which showed that Nicolasa had already renounced all her rights over the subject property in 1989, or two (2) years before she authorized Carmelita to mortgage the subject property.^[50] Hence, finding that Artemio's claim of ownership as against Nicolasa is "at the very least, bona fide and made in good faith," the CA ruled that the RTC should have desisted from enforcing the writ of possession against Artemio's heirs, herein respondents.^[51] The remedy, according to the CA, "is not the implementation of the writ of possession but for the purchaser or the redemptioner to institute ejectment proceedings or a reivindicatory action."^[52]

Dissatisfied, petitioners filed a motion for reconsideration,^[53] which was, however, denied in a Resolution^[54] dated July 8, 2011; hence, this petition.

The Issue Before the Court

The main issue for the Court's resolution is whether or not the CA erroneously set aside the Writ of Possession and Notice to Vacate issued by the RTC in favor of herein petitioners.

The Court's Ruling

The petition is meritorious.

"It is well-settled that the purchaser in an extrajudicial foreclosure of real property becomes the *absolute* owner of the property if no redemption is made within one [(1)] year from the registration of the certificate of sale by those entitled to redeem. As absolute owner, he is entitled to all the rights of ownership over a property recognized in Article 428 of the New Civil Code, not least of which is possession, or *jus possidendi*["^[55]

"Possession being an essential right of the owner with which he is able to exercise the other attendant rights of ownership, after consolidation of title[,], the purchaser in a foreclosure sale may demand possession as a matter of right. This is why Section 7 of Act No. 3135,^[56] as amended by Act No. 4118,^[57] imposes upon the RTC a ministerial duty to issue a writ of possession to the new owner upon a mere *ex parte* motion. Section 7 reads:

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 194 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 11 of Section 114 of Act No. 496, as amended by Act No. 2866, 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.

In *Spouses Arquiza v. CA*,^[58] it was reiterated that simply on the basis of the purchaser's ownership of the foreclosed property, there is no need for an ordinary action to gain possession thereof:

Indeed, it is well-settled that an ordinary action to acquire possession in favor of the purchaser at an extrajudicial foreclosure of real property is not necessary. 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. The basis of this right to possession is the purchaser's ownership of the property. The mere filing of an *ex parte* motion for the issuance of the writ of possession would suffice, and no bond is required."^[59]

In *Asia United Bank v. Goodland Company, Inc.*,^[60] the Court observed that the *ex parte* application for [a] writ of possession is a non-litigious summary proceeding without need to post a bond, except when possession is being sought even during the redemption period:

It is a time-honored legal precept that after the consolidation of titles in the buyer's name, for failure of the mortgagor to redeem, entitlement to a writ of possession becomes a matter of right. As the confirmed owner, the purchaser's right to possession becomes absolute. There is even no need for him to post a bond, and it is the ministerial duty of the courts to issue the same upon proper application and proof of title. To accentuate the writ's ministerial character, the Court has consistently disallowed injunction to prohibit its issuance despite a pending action for annulment of mortgage or the foreclosure itself.

The nature of an *ex parte* petition for issuance of the possessory writ under Act No. 3135 has been described as a non-litigious proceeding and summary in nature. As an *ex parte* proceeding, it is brought for the benefit of one party only, and without notice to or consent by any person adversely interested.^[61] (Emphasis and underscoring supplied)

Further, in *BPI Family Savings Bank, Inc. v. Golden Power Diesel Sales Center, Inc.* [62] (*BPI Family*), the Court remarked that not even a pending action to annul the mortgage or the foreclosure sale will by itself stay the issuance of the writ of possession:

Furthermore, it is settled that a pending action for annulment of mortgage or foreclosure sale does not stay the issuance of the writ of possession. The trial court, where the application for a writ of possession is filed, does not need to look into the validity of the mortgage or the manner of its foreclosure. The purchaser is entitled to a writ of possession without prejudice to the outcome of the pending annulment case. [63]

However, Section 33, Rule 39 of the Rules of Court - which is applied to extrajudicial foreclosure of mortgages per Section 6 of Act No. 3135 - provides that upon the expiration of the redemption period, the possession of the property shall be given to the purchaser or last redemptioner, **unless a third party is actually holding the property adversely to the judgment obligor.**

"In *China Banking Corporation v. Spouses Lozada*, [64] it was held that for the court's ministerial duty to issue a writ of possession to cease, it is not enough that the property be held by a third party, but rather the said possessor **must have a claim thereto adverse to the debtor/mortgagor:**

Where a parcel levied upon on execution is occupied by a party other than a judgment debtor, the procedure is for the court to order a hearing to determine the nature of said adverse possession. Similarly, in an extrajudicial foreclosure of real property, when the foreclosed property is in the possession of a third party holding the same adversely to the defaulting debtor/mortgagor, the issuance by the RTC of a writ of possession in favor of the purchaser of the said real property ceases to be ministerial and may no longer be done *ex parte*. For the exception to apply, however, the property need not only be possessed by a third party, but also held by the third party adversely to the debtor/mortgagor. [65]

Specifically, the Court held that to be considered in adverse possession, **the third party possessor must have done so in his own right and not merely as a successor or transferee of the debtor or mortgagor:**

The exception provided under Section 33 of Rule 39 of the Revised Rules of Court contemplates a situation in which a third party holds the property by adverse title or right, such as that of a co-owner, tenant or usufructuary. The co-owner, agricultural tenant, and usufructuary possess the property in their own right, and they are not merely the successor or transferee of the right of possession of another co-owner or the owner of the property. x x x. [66]

Thus, in *BPI Family*, the Court ruled that it was an error to issue an *ex parte* writ of possession to the purchaser in an extrajudicial foreclosure, or to refuse to abate one already granted, **where a third party has raised in an opposition to the writ or in a motion to quash the same, his actual possession thereof upon a claim of ownership or a right adverse to that of the debtor or mortgagor. The procedure, according to *Unchuan v. CA*, [67], is for the trial court to order a**