

## THIRD DIVISION

[ G.R. No. 188069, June 17, 2015 ]

**REYNALDO P. BASCARA, PETITIONER, VS. SHERIFF ROLANDO G. JAVIER AND EVANGELINE PANGILINAN, RESPONDENTS.**

### D E C I S I O N

**PERALTA, J.:**

This petition for review on *certiorari* under Rule 45 of the 1997 Revised Rules on Civil Procedure (*Rules*) seeks to reverse and set aside the March 4, 2009 Decision<sup>[1]</sup> and May 29, 2009 Resolution<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 103194, which affirmed the Orders dated January 17, 2008<sup>[3]</sup> and April 3, 2008,<sup>[4]</sup> of the Regional Trial Court (*RTC*), Branch 111, Pasay City, in LRC Case No. 06-0036-CFM, denying petitioner's motion to recall the writ of possession and directing respondent sheriff to implement the writ.

The facts are as follows:

On August 1, 2006, respondent Evangeline C. Pangilinan (*Pangilinan*) filed an *ex parte* petition for the issuance of a writ of possession. The case, docketed as LRC Case No. 06-0036-CFM, was raffled before Regional Trial Court, Branch 111, Pasay City. Essentially, the petition alleged that, on August 13, 2004, Rosalina P. Pardo (*Pardo*) executed in favor of Pangilinan a real estate mortgage (REM) over a parcel of land covered by Transfer Certificate of Title (TCT) No. 135066 as a security for the payment of a loan in the amount of P200,000.00; that Pardo failed to comply with the terms and conditions of the promissory note with REM; that upon compliance with the statutory requirements, the mortgaged property was sold at public auction to Pangilinan as the highest bidder; that the one-year redemption period already elapsed without Pardo exercising the right to redeem the subject property; that the title over the lot was consolidated and transferred in the name of Pangilinan as evidenced by TCT No. 147777; and, that Pardo, her agents, and persons claiming rights under her failed and refused to vacate the subject premises despite several demands.<sup>[5]</sup>

On January 31, 2007, the trial court granted the petition.<sup>[6]</sup> The Notice to Vacate and Surrender Possession was issued by respondent Sheriff Rolando G. Javier (*Javier*) on April 15 2007 pursuant to the writ of possession issued by the court on March 26, 2007.<sup>[7]</sup>

Claiming as the true, lawful and absolute owner of the subject property that is in his possession, petitioner filed an Affidavit of Third-Party Claim<sup>[8]</sup> and a Motion to Recall Writ of Possession<sup>[9]</sup> on April 23, 2007. The motion alleged as follows:

x x x x

3. On August 1, 2006, or prior to the filing of the above-entitled Petition for Writ of Possession, [Pangilinan] filed with the Regional Trial Court of Pasay City, Branch 108, a Petition for Cancellation of Adverse Claim which annotation was carried over to her title. Transfer Certificate of Title (TCT) No. 147777, from the previous title, TCT No. 135066, in the name of Third-Party Claimant's aunt and benefactor, the late ROSALINA P. PARDO x x x;

4. In response to the said Petition for Cancellation of Adverse Claim, Third-Party Claimant filed an Opposition and Motion to Dismiss x x x;

5. The said Opposition and Motion to Dismiss x x x states the following:

(a)[Third-Party Claimant] is the nephew and ward of the late ROSALINA P. PARDO x x x, who owned a certain parcel of land, with improvements thereon x x x as evidenced by Transfer Certificate of Title (TCT) No. 135066 of the Registry of Deeds of Pasay City x x x;

(b)During her lifetime, or on **May 15, 1999**, PARDO executed a duly notarized deed of **DONATION MORTIS CAUSA** donating the Subject Property to and in favor of Third-Party Claimant x x x;

(c)Four years later, or on **May 20, 2003**, PARDO, a widow, age 78, died intestate, and without issue x x x;

(d)PARDO having passed away intestate and without issue and by virtue of the **DONATION MORTIS CAUSA**, Third-Party Claimant became the owner of the Subject Property. Me and his family have since taken possession thereof and are residing there up to now;

(e)To supplement what little and highly irregular, if totally unreliable, income he gets from working part time in a cousin's small business enterprise, Third-Party Claimant leases out portions of the house to boarders, one of them a woman known by the name of EVANGELINE P. CACALDA;

(f) In the course of time, CACALDA, who represented herself as having the capacity to have the title transferred to Third-Party Claimant's name, was able to gain the complete confidence of the Third-Party Claimant, and he, in all his layman's utter vulnerability, entrusted her not only with the owner's duplicate of **TCT No. 135066** x x x for purposes of transferring the Subject Property to Third-Party Claimant's name but also the amount of P135,000.00 (out of the hurried sale of another small property he also inherited from PARDO) to pay what CACALDA made him believe was the amount of taxes and other expenses to be incurred to have the title transferred;

(g)However, CACALDA never got the transfer done, and, not before long, left the Third-Party Claimant's house where she

was boarding, and never showed up ever again;

- (h) Sometime in October 2004, Third-Party Claimant discovered the following Entry No. 2004-5119/T-135066 which was annotated on August 13, 2004 on page 2 of TCT 135066 x x x, which reads:

**ENTRY NO. 2004-5119/T-135066 - REAL ESTATE MORTGAGE WITH SPECIAL POWER TO SELL MORTGAGE (sic) PROPERTY WITHOUT JUDICIAL PROCEEDINGS** - *In favor of EVANGELINE C. PANGILINAN (Mortgagee) covering the property described herein to guarantee the credit facility or principal loan obligation in the amount of TWO HUNDRED THOUSAND PESOS (P200,000.00), Philippine Currency, upon terms and conditions set forth in Doc. No. 458; page No. 92; Book No. 41; Series of 2004 acknowledged before Notary Public Jesus B. Bongonfor Pasay City.*

- (i) Upon learning about the above-cited annotation on TCT No. 135066 xxx Third-Party Claimant sought the assistance of the Public [Attorney's] Office and filed a complaint for estafa against CACALDA on October 6, 2004 and annotated his Adverse Claim on TCT 135066 x x x per Entry No. 2004-7480/T-135066 dated October 28, 2004;
- (j) In response to the said Petition, Third-Party Claimant xxx filed an *OPPOSITION AND MOTION TO DISMISS* x x x, to which [Pangilinan] filed her *REPLY/COMMENT* where she attached, among other documents, copies of the following:

j.1 *Real Estate Mortgage with Special Power to Sell Mortgaged Property Without Judicial Proceedings* allegedly signed by PARDO xxx;

j.2 The purported Community Tax Certificate (CTC) No. CC12003 21039100 issued July 13, 2004 in Pasay City, of alleged PARDO who mortgaged the Subject Property xxx:

j.3 Two photographs taken by the alleged mortgagor-debtor PARDO when she signed the loan documents x x x [.]

6. From all the foregoing, it is crystal clear that:

- a. PARDO, the true and real owner of the Subject Property, COULD NOT HAVE ENTERED INTO, MUCH LESS SIGNED, the *Real Estate Mortgage with Special Power to Sell Mortgaged Property Without Judicial Proceedings* x x x, as she had been **LONG DEAD** at the time of the execution thereof x x x;
- b. PARDO, the true and real owner of the Subject Property, who was born on December 29, 1924, was **78 years old**

at the time she died on May 20, **2003**, as shown in her Death Certificate x x x and in her obituary xxx, and could not have been the PARDO who issued the Community Tax Certificate (CTC) No. CC12003 21039100 issued July 13, 2004 in Pasay City xxx with the birth date "April 25, 1957," which CTC was submitted to, and relied upon by, Defendant PANGILINAN to establish the identity of PARDO[,] the alleged mortgagor-debtor;

- c. The **photographs** x x x taken of the alleged PARDO who mortgaged the Subject Property and who received the proceeds of the mortgage loan of P200,000.00 **show CACALDA, the former boarder of [Third-Party Claimant] and swindler par [excellence]**, and CERTAINLY NOT THE LONG DECEASED PARDO, the true and real owner of the Subject Property;
- d. All the signatures, including the thumbmarks, shown on the *Real Estate Mortgage with Special Power to Sell Mortgaged Property Without Judicial Proceedings* x x x are **FAKE, COUNTERFEIT, BOGUS, PHONY AND FORGED**, as they DON'T belong to PARDO, the true and real owner of the Subject Property, who had been LONG DEAD at the time of the execution thereof, but to the impostor CACALDA.

7. The said Petition for Cancellation of Adverse Claim is yet to be resolved by Hon. Ma. Rosario B. Ragasa, Presiding Judge of RTC Branch 108, and here is [Pangilinan] filing yet another petition, this time for Writ of Possession;

8. Third-Party Claimant has already filed a complaint directly attacking the validity of [Pangilinan's] title and praying for, among other things, the annulment of TCT 1 Mill as having emanated from an illegal source, as well as the reinstatement of the former title, TCT 135066, in the name of PARDO, Third-Party Claimant's deceased aunt, benefactor and donor without all the liens and [encumbrances] caused to be annotated thereon by Petitioner x x x.

9. Third-Party Claimant is the rightful owner of the Subject Property and is entitled to its possession, not [Pangilinan] whose title TCT 147777 emanated from an illegal source and is therefore null and void.<sup>[10]</sup>

In her Comment/Opposition,<sup>[11]</sup> Pangilinan relied on *Spouses Arquiza v. Court of Appeals*,<sup>[12]</sup> *Autocorp Group & Autographies, Inc. v. Court of Appeals*,<sup>[13]</sup> *Chailease Finance, Corp. v. Spouses Ma*,<sup>[14]</sup> *Sps. de Vera v. Hon. Agloro*,<sup>[15]</sup> *PNB v. Sanao Marketing Corp.*,<sup>[16]</sup> and *Sps. Yulienco v. Court of Appeals*<sup>[17]</sup> insofar as these cases held that the trial court has the ministerial duty to issue a writ of possession, which cannot be stayed by an injunction or a pending action for annulment of the real estate mortgage or the extra-judicial foreclosure proceedings.

Meanwhile, in April 2007, petitioner filed an action for Annulment of Title and Damages against Pangilinan and Robert H. Guillermo in his official capacity as the Register of Deeds of Pasay City.<sup>[18]</sup> It was docketed as Civil Case No. 07-0529-CFM and raffled before the Pasay RTC, Branch 110.

After exchanges of subsequent pleadings<sup>[19]</sup> in LRC Case No. 06-0036-CF, the trial court eventually ruled in favor of Pangilinan. On January 17, 2008, it denied petitioner's motion to recall the writ of possession and directed respondent Sheriff Javier to implement the same. On April 3, 2008, petitioner's motion for reconsideration<sup>[20]</sup> was likewise denied.

Petitioner elevated the case to the appellate court. Nevertheless, the CA did not find any evidence that the trial court acted in a capricious and despotic manner or that the questioned Orders were issued by reason of passion, prejudice or personal hostility. It opined that any question regarding the regularity and validity of the extrajudicial foreclosure sale, as well as the consequent cancellation of the writ of possession, is to be determined in a subsequent proceeding, pursuant to Section 8 of Act No. 3135,<sup>[21]</sup> as amended by Act No. 4118,<sup>[22]</sup> and that such question should not be raised as a justification for opposing the issuance of the writ since the proceeding is heard *ex parte*.

The motion for reconsideration<sup>[23]</sup> filed by petitioner was denied; hence, this petition.

We deny.

In extrajudicial foreclosures of real estate mortgages, the issuance of a writ of possession is governed by Section 7 of Act No. 3135, as amended, which provides:

SECTION 7. In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance (Regional Trial Court) 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.