

[**G.R. No. 188931, July 28, 2014**]

JUANITO M. GOPIAO, PETITIONER, VS. METROPOLITAN BANK & TRUST CO., RESPONDENT.

D E C I S I O N

PERALTA, J.:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside the Decision^[1] and Resolution^[2] dated March 10, 2009 and May 29, 2009, respectively, of the Court of Appeals (CA) in CA-G. R. SP No. 106705, which affirmed the Orders^[3] dated September 18, 2008 and November 27, 2008 of the Regional Trial Court (RTC) of San Fernando, Pampanga in Civil Case No. 666.

The antecedents are as follows:

This case stemmed from LRC Case No. 666, a Petition for the Issuance of Writ of Possession of real properties, covered by Transfer Certificate of Title (TCT) Nos. 489198-R, 489199-R, and 489200-R of the Register of Deeds of San Fernando, Pampanga, filed by respondent Metropolitan Bank & Trust Co.^[4] In said case, the RTC of San Fernando, Pampanga issued, on November 5, 2007, a writ of possession in favor of respondent Bank when it purchased the subject properties at a public auction and registered the same in its name on October 1, 1998. Consequently, on January 4, 2008, a Notice to Vacate was served on Green Asia Construction and Development Corporation, represented by the spouses Renato and Delia Legaspi (*the Spouses Legaspi*).^[5]

Upon learning of the notice to vacate, petitioner filed an Affidavit of Third Party Claim^[6] on January 8, 2008 and a Very Urgent Motion for Intervention and to Recall and/or Stop the Enforcement/Implementation of the Writ of Possession January 9, 2008.^[7] In said actions, petitioner alleged to be in actual occupation of the subject properties and claimed ownership thereof by virtue of a Deed of Sale dated May 20, 1995 executed by the Spouses Legaspi in his favor.

On September 18, 2008, the trial court denied petitioner's claims in its Order,^[8] the pertinent portions of which read:

Juanito M. Gopiao's motion for intervention is too late in the day to entertain. His resurfacing now puts his action in doubt. It has been twenty-three (23) long years ago since the alleged Deed of Absolute Sale was executed and yet he has not registered the properties in his name. His motion tries to resurrect a dead horse. This is a ruse to disallow the taking over the properties by Metropolitan Bank and Trust Company. This alone militates against this motion of intervention. Juanito M. Gopiao's

legal interest in these properties is, thus, beclouded.

WHEREFORE, the Motion for Intervention and to Recall and/or Stop the Enforcement/Implementation of the Writ of Possession is **DENIED** for lack of merit.^[9]

When the RTC denied petitioner's Motion for Reconsideration of the above-quoted decision, petitioner elevated his claim to the CA via petition for *certiorari* alleging that the RTC committed grave abuse of discretion amounting to lack and/or excess of jurisdiction. On March 10, 2009, however, the CA dismissed said petition in the following wise:

In this case, the trial court committed no grave abuse of discretion in denying petitioner's "Motion for Intervention and to Recall and/or Stop the Enforcement/Implementation of the Writ of Possession." To substantiate his claim of ownership over the subject properties, petitioner offered in evidence an un-notarized and unregistered deed of sale. As pointed out by the private respondent bank in its Comment, petitioner even failed to prove the due execution and authenticity of the said deed of absolute sale.

On the other hand, the respondent bank was a mortgagee in good faith. It has shown that prior to the approval of the loan application of the borrowers, it checked the records of the properties offered as collaterals at the Registry of Deeds and verified that the titles were clean. Moreover, it inspected the premises and found no occupants. Thus, it approved the loan secured by the mortgage over the subject properties which they caused to be registered. When the borrowers defaulted, it foreclosed the mortgage, purchased the property at the public auction and registered the Certificate of Sale on October 1, 1998. The real properties are now covered by TCT No. 489198-R, TCT No. 489199-R and TCT No. 489200-R registered in its name. Thus, a writ of possession was issued in its favor.^[10]

Petitioner's Motion for Reconsideration was likewise subsequently denied in a CA Resolution^[11] dated May 29, 2009. Hence, this petition filed by petitioners raising the following errors:

I.

THE CA ERRED IN RULING THAT THE RTC COMMITTED NO GRAVE ABUSE OF DISCRETION IN DENYING PETITIONER'S INTERVENTION EVEN IF THE RTC VIOLATED EXISTING JURISPRUDENCE.

II.

THE CA ERRED IN RULING ON A NON-ISSUE: THE ALLEGED GOOD FAITH OF RESPONDENT AS A MORTGAGEE.

III.

THE CA ERRED IN RULING ON THE EXISTENCE OF DOUBLE SALE INSTEAD OF THE PREFERRED RIGHT OF PETITIONER.

Petitioner posits that the RTC gravely abused its discretion when it failed to recognize his right as a third party adverse possessor. He explains that while the issuance of a writ of possession after a foreclosure sale is ministerial, it ceases to be a ministerial duty of the court if there is a third party holding the property adversely to the judgment debtor.^[12] He claims that since he has been in possession of the subject properties by virtue of a Deed of Sale executed by the Spouses Legaspi in his favor, the RTC exceeded its powers in denying its intervention. In support of his claim, petitioner cited rulings of this Court wherein we prevented the enforcement of writs of possession against adverse third-party possessors.

Petitioner further maintains that the CA erred in ruling that there exists a double sale in this case and, thus, the good faith of respondent Bank is material.^[13]

The petition is bereft of merit.

We agree with the CA when it found that the RTC did not gravely abuse its discretion in dismissing petitioner's Affidavit of Third-Party Claim and Very Urgent Motion for Intervention and to Recall and/or Stop the Enforcement/Implementation of the Writ of Possession.

A writ of possession is a writ of execution employed to enforce a judgment to recover the possession of land.^[14] It commands the sheriff to enter the land and give its possession to the party entitled under the judgment. Under Sections 6 and 7 of Act 3135,^[15] as amended by Act 4118,^[16] a writ of possession may be issued in favor of a purchaser in a foreclosure sale of a real estate mortgage either (1) within the one-year redemption period, upon the filing of a bond; or (2) after the lapse of the redemption period, without need of a bond.^[17]

It is a well-established rule that the issuance of a writ of possession to a purchaser in a public auction is a ministerial function of the court, which cannot be enjoined or restrained, even by the filing of a civil case for the declaration of nullity of the foreclosure and consequent auction sale.^[18]

Once title to the property has been consolidated in the buyer's name upon failure of the mortgagor to redeem the property within the one-year redemption period, the writ of possession becomes a matter of right belonging to the buyer. Its right to possession has then ripened into the right of a confirmed absolute owner and the issuance of the writ becomes a ministerial function that does not admit of the exercise of the court's discretion.^[19]

Moreover, a petition for a writ of possession is ex-parte and summary in nature. As one brought for the benefit of one party only and without notice by the court to any person adverse of interest, it is a judicial proceeding wherein relief is granted without giving the person against whom the relief is sought an opportunity to be heard. Since the judge to whom the application for writ of possession is filed need

not look into the validity of the mortgage or the manner of its foreclosure, it has been ruled that the ministerial duty of the trial court does not become discretionary upon the filing of a complaint questioning the mortgage.^[20] Corollarily, any question regarding the validity of the extrajudicial foreclosure sale and the resulting cancellation of the writ may, likewise, be determined in a subsequent proceeding as outlined in Section 8 of Act No. 3135.^[21]

The foregoing rule, however, admits of a few exceptions, one of which is when a third party in possession of the property claims a right adverse to that of the debtor-mortgagor, as this Court has time and again upheld in numerous cases, consistent with Section 33^[22] of Rule 39 of the Rules of Court. As such, petitioner claims that since the following rulings squarely apply to the instant case, the writ of possession should not be enforced against him.

Petitioner first cites our ruling in *Heirs of the Late Domingo N. Nicolas v. Metropolitan Bank & Trust Company (Metrobank)*^[23] wherein we applied the exception rather than the general rule. In said case, when the surviving spouse of decedent Domingo mortgaged certain conjugal lots wherein the family home was situated to Metrobank, which had successfully purchased the same in a public auction, we ruled that the subsequent writ of possession may only be enforced against the share of the surviving spouse and not against the share of the other heirs of decedent Domingo. This is because the other heirs are strangers or third parties therein whose rights cannot be determined as they were not impleaded by in the foreclosure proceeding. Thus, we held that they should not be deprived of their legitime by the enforcement of the writ of possession.

Petitioner next cites our ruling in *Dayot v. Shell Chemical Company (Phils.), Inc.*^[24] wherein we held that the trial court was without authority to grant the *ex-parte* writ of possession in favor of petitioner Dayot since respondent Shell had been indisputably in possession of the subject lots since 1975 and that it had in its premises bulk plant and fuel storage facilities for the purpose of conducting its business. It was proven therein that petitioner Dayot even had knowledge of respondent Shell's prior possession of the disputed properties. Yet, instead of pursuing an independent civil action where respondent Shell will be given a chance to substantiate its claim of ownership, petitioner insisted on obtaining a writ of possession pursuant to its alleged right as purchaser of the properties which had been extrajudicially foreclosed. Such was a procedural shortcut this Court could not sanction.

Finally, petitioner refers to our ruling in *Philippine National Bank v. Court of Appeals*^[25] wherein we opined that it was not a ministerial duty of the trial court under Act No. 3135 to issue a writ of possession for the ouster of private respondents from the subject property since they were the actual occupants thereof. There was no question on the actual possession of the private respondents who were third parties adversely holding the subject property. In fact, petitioner Bank's representative actually testified to the knowledge thereof. According to petitioner Bank, they even invited private respondents to a conference to discuss the ownership of the foreclosed property. However, instead of bringing an action to court for the ejectment of private respondents, it chose to simply file an *ex-parte* petition for a writ of possession pursuant to its alleged right as purchaser in the extrajudicial foreclosure sale. For this reason, we held that the *ex-parte* writ could only be

rightfully recognized against the judgment debtors but not against private respondents who assert a right adverse to the judgment debtors.

Relying on the foregoing rulings, petitioner contends that since he is likewise a third party in possession of the subject properties claiming a right adverse to that of the mortgagor-spouses Legaspi, the writ of possession issued by the lower court should not be implemented against him.

Petitioner is mistaken. The present case cannot be said to be identically analogous to any of the exceptions discussed above. While the facts of the foregoing rulings are similar to that of the instant case, there remains one crucial difference: the certainty of possession. In all three cases cited by the petitioner, the fact that the subject property was actually in the possession of the adverse third party is undisputed. In fact, it was proven that the mortgagee-banks therein even had actual knowledge of the third parties' adverse possession. But in spite of this, the mortgagee-banks insisted on obtaining writs of possession instead of pursuing independent actions to assert their claims.

In contrast, petitioner's possession of the subject properties in this case is questionable. As correctly observed by the courts below, petitioner failed to substantiate his possession with sufficient evidence. On its face, the Deed of Absolute Sale^[26] relied upon by petitioner is neither complete nor in due form. Certain essential details are missing therein, such as the tax account numbers of the interested parties and the names of the witnesses.^[27] More importantly, the same was not notarized. As pointed out by the CA, petitioner even failed to prove the due execution and authenticity of the document.^[28] Apart from the unnotarized and unrecorded Deed of Absolute Sale, petitioner did not present other convincing evidence to bolster his claim of ownership and/or possession.

Equally telling is that the titles covering the subject properties depict no trace of petitioner's claim. The findings of the trial court reveal that the unnotarized Deed of Sale is nowhere to be found on the dorsal side of the titles.^[29] There is likewise no notice or adverse claim annotated or inscribed at the back of the same.^[30] Upon verification at the Office of the Register of Deeds for the Province of Pampanga, Municipal Assessor and Treasurer's Office, respondent bank found out that the subject titles and latest tax declarations covering the disputed properties were still registered under the names of the Spouses Legaspi without any annotation on the same as to the existence of a sale between said spouses and petitioner.^[31]

If petitioner had really purchased the subject properties from the Spouses Legaspi back in 1995, why is it that he has not, up until now, taken any steps in obtaining the titles thereto? If petitioner really believed himself to be the true owner of the disputed properties, he should have at least registered the document that evidences his ownership thereof and paid real estate taxes thereon under his name. Petitioner, however, failed to provide evidence of any attempt in registering his ownership much less any reason for his failure to do so.

To cast more doubt on petitioner's claim of possession, the RTC and CA are in agreement as to the fact that respondent Bank found no occupants in the subject properties when it inspected the same before approving the loan applied for by the