

EN BANC

[G.R. No. 196040, August 26, 2014]

**FE H. OKABE, PETITIONER, VS. ERNESTO A. SATURNINO,
RESPONDENT.**

DECISION

PERALTA, J.:

Before us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking the reversal of the Decision^[1] dated September 24, 2010 and Resolution^[2] dated March 9, 2011 of the Court of Appeals (CA) in CA-G.R. SP No. 110029.

The facts, as culled from the records, are as follows:

The subject of the controversy is an eighty-one (81) square meter property located in Barangay San Antonio, Makati City, which was initially covered by Transfer Certificate of Title (TCT) No. 175741 under the name of the wife of respondent Ernesto A. Saturnino. Sometime in 1994, the couple obtained a loan with the Philippine National Bank (PNB), which was secured by the subject property. Because of the couple's failure to settle their loan obligation with the bank, PNB extrajudicially foreclosed the mortgage.

On August 24, 1999, the Certificate of Sale was inscribed on TCT No. 175741. Considering that the property was not redeemed by respondent during the redemption period, consolidation of ownership was inscribed on October 13, 2006 and a new TCT was issued in favor of PNB.

Without taking possession of the subject property, PNB sold the land to petitioner Fe H. Okabe on June 17, 2008. TCT No. 225265

was later issued in petitioner's name on August 13, 2008.

On November 27, 2008, petitioner filed with the Regional Trial Court (RTC) of Makati City an Ex-Parte Petition for Issuance of Writ of Possession^[3] over the subject property, to which respondent submitted an Opposition with Motion to Dismiss.^[4] Petitioner filed her Reply to/ Comment on the Opposition with Motion to Dismiss,^[5] while respondent submitted his Oppositor-Movant's Rejoinder with Motion for Postponement.^[6]

On April 30 2009, the RTC issued an Order^[7] denying respondent's Opposition with Motion to Dismiss for lack of merit. The RTC, citing the case of *Ramos v. Mañalac and Lopez*^[8] opined that the issuance of a writ of possession in favor of the petitioner was merely a ministerial and complementary duty of the court.

Respondent then filed an Urgent Motion for Clarification (of the Order dated 30 April 2009),^[9] then a Motion for Reconsideration,^[10] which was followed by a Supplement to the Motion for Reconsideration^[11] which petitioner likewise opposed.^[12]

On July 29, 2009, the RTC issued an Order^[13] denying respondent's Motion for Reconsideration and the Supplement to the Motion for Reconsideration. The RTC ruled, among other things, that the right of the petitioner to be placed in absolute possession of the subject property was a consequence of her right of ownership and that petitioner cannot be deprived of said possession being now the registered owner of the property.

Dismayed, respondent filed on August 17, 2009 a Petition for *Certiorari*^[14] with the CA questioning the Orders of the RTC based on the following grounds:

I

HON. JUDGE BENJAMIN T. POZON FAILED TO CONSIDER THE FACT THAT PRIVATE RESPONDENT WAS ALREADY ESTOPPED FROM ASKING FOR THE ISSUANCE OF A WRIT OF POSSESSION CONSIDERING THAT THE VERY DEED OF ABSOLUTE SALE FROM WHICH HER ALLEGED RIGHT EMANATES EXPLICITLY (sic) GAVE HER THE ONLY OPTION OF FILING AN EJECTMENT SUIT.

II

HON. JUDGE BENJAMIN T. POZON FAILED TO CONSIDER THAT *SECTION 7 OF ACT NO. 3135, AS AMENDED BY ACT 4118* SHOULD BE CONSTRUED STRICTLY.^[15]

Respondent prayed, among other things, that the CA reverse and set aside the assailed Orders and that a Temporary Restraining Order (TRO) be issued enjoining the RTC from hearing the petition for the issuance of a writ of possession.

Meanwhile, on November 23, 2009, the RTC rendered a Decision^[16] in favor of petitioner, which granted her *ex-parte* petition and ordered that the corresponding writ of possession over the subject property be issued in her favor. The decretal portion of which reads:

WHEREFORE, premises considered, and in accordance with Section 7 of Act No. 3135, as amended, the instant petition [is] hereby **GRANTED**.

Let the corresponding Writ be issued in favor of the herein petitioner Fe H. Okabe to place her in possession of the subject property. No bond is required to be posted by petitioner Fe H. Okabe, she, being the successor-in-interest of Philippine National Bank, the purchaser in the foreclosure sale, which had consolidated that title on the subject property

in its name prior to the herein petitioner.

Furnish copies of this Decision to the parties and their respective counsels.

SO ORDERED.^[17]

Respondent filed a motion to set aside the said Decision, but the same was denied by the RTC in its Order^[18] dated April 27, 2010.

On May 13, 2010, petitioner filed a Motion for Execution of Judgment.

On July 8, 2010, the RTC issued an Order^[19] granting the motion. On even date, the branch clerk of court issued a Writ of Possession^[20] addressed to the Sheriff ordering the latter to place petitioner in possession of the subject property.

On July 14, 2010, the Sheriff, together with petitioner, tried to cause the service of the notice to vacate upon the respondent, but the property was already abandoned by its occupants. The Sheriff, with the assistance of barangay officials, thus, posted the notice to vacate together with the writ of possession in front of the gate of the subject property.^[21]

On July 20, 2010, the Sheriff, the petitioner, and the barangay officials returned to the property to cause the implementation of the writ of possession. After finding that no one was occupying the property, the Sheriff turned over possession of the subject property to the petitioner free and clear of occupants and personal property.^[22]

In the proceedings before the CA, respondent filed a Motion to Admit Herein Memorandum of Authorities in Amplification/Support of the Position of Petitioner in this Case and Reiterating Prayer for Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction.^[23] In the said motion, respondent alleged that the RTC was about to issue the writ of possession prayed for by the petitioner and that a TRO was necessary to prevent great and irreparable injury which respondent may suffer if removed from possession of the property in question.

On July 19, 2010, the CA issued a Resolution^[24] granting the issuance of a TRO in favor of the respondent and commanding petitioner and the RTC to refrain from committing any acts relative to the proceedings before it upon the posting of a bond.

In a Manifestation^[25] dated July 21, 2010 the RTC Presiding Judge informed the CA that as much as the court would like to comply with its directive, it can no longer do so because the writ of possession had already been implemented by the Branch Sheriff on July 20, 2010.

On September 24, 2010, the CA rendered the assailed Decision which granted respondent's petition and vacated the challenged orders of the RTC. The *fallo* reads:

WHEREFORE, we resolve to **GRANT** the instant petition. The challenged orders below are consequently vacated. The respondents are permanently enjoined from proceeding against the petitioner via an *ex-parte* motion for a writ of possession.

IT IS SO ORDERED.^[26]

The CA opined, among other things, that although it may be true that by virtue of the contract of sale, petitioner obtained the same rights of a purchaser-owner and which rights she derived from erstwhile mortgagee turned owner PNB, this does not mean that the right to file an *ex-parte* motion for a writ of possession under Act 3135 had also been transferred to the petitioner. Such a special right is granted only to purchasers in a sale made under the provisions of Act 3135. The CA ruled that to allow a second, third, or even tenth subsequent buyer of the foreclosed property to evict the mortgagor-debtor or his successor-in-interest from the said property or wrench away possession from them via a mere *ex-parte* motion is to trample upon due process because whatever defenses that the owner mortgagor/actual possessor may have would have been drowned and muted by the *ex-parte* writ of possession. Considering that the transaction between PNB and the petitioner was by an ordinary contract of sale, an *ex-parte* writ of possession may not therefore be issued in favor of the latter.

Unfazed, petitioner filed a Motion for Reconsideration on the ground that respondent's possession of the property had become illegal and that the procedure affecting his possession was moot and academic for he was no longer in possession of the subject property.

In a Resolution dated March 9, 2011, the CA denied petitioner's Motion for Reconsideration.

Hence, the present petition wherein petitioner raises the following arguments to support its petition:

I

RESPONDENT IS WELL AWARE OF THE FACT THAT OWNERSHIP HAD TRANSFERRED TO PETITIONER AND THAT HIS POSSESSION OF THE PROPERTY HAD BECOME ILLEGAL.

II

PETITIONER, AS THE REGISTERED OWNER OF THE PROPERTY, IS ENJOYING POSSESSION OF THE PROPERTY IN THE CONCEPT OF AN OWNER AND A RULING OF THIS HONORABLE COURT REGARDING THE PROCEDURE PERTAINING TO PETITIONER'S POSSESSION OF THE PROPERTY IS MOOT AND ACADEMIC.^[27]

Petitioner argues that her possession of the subject property as its registered owner should not be disturbed. Petitioner posits that considering that respondent failed to

redeem the subject property within the redemption period, respondent should not be granted a favor nor rewarded for his failure to redeem and for his illegal occupation of the property. Petitioner contends that the issue regarding possession of the property has become moot and academic since she, being the registered owner of the property, has been in possession thereof since July 20, 2010. Petitioner stresses that the ruling of the CA, that she is “permanently enjoined from proceeding against the [respondent] via an *ex-parte* motion for a writ of possession,” would result in an absurdity since she is already in possession of the land.

Petitioner now prays that the Court rectify the situation and for it to reverse the ruling of the CA based on the fact that the proceedings for the *ex-parte* motion for a writ of possession has already been terminated and possession of the subject property was awarded by the lower court in her favor, thus rendering the arguments raised by respondent in his petition for *certiorari* before the CA moot and academic.

In essence, the issue is whether or not, in the case at bar, an *ex-parte* petition for the issuance of a writ of possession was the proper remedy of the petitioner in obtaining possession of the subject property.

Section 7 of Act No. 3135,^[28] as amended by Act No. 4118,^[29] states:

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 the form of an *ex parte* motion x x x 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 or the mortgagee who is also the purchaser in the foreclosure sale may apply for a writ of possession during the redemption period,^[30] upon an *ex-parte* motion and after furnishing a bond.

In *GC Dalton Industries, Inc. v. Equitable PCI Bank*,^[31] the Court held that the issuance of a writ of possession to a **purchaser in an extrajudicial foreclosure** is summary and ministerial in nature as such proceeding is merely an incident in the transfer of title. Also, in *China Banking Corporation v. Ordinario*,^[32] we held that under Section 7 of Act No. 3135, the purchaser in a foreclosure sale is entitled to possession of the property.

In the recent case of *Spouses Nicasio Marquez and Anita Marquez v. Spouses Carlito Alindog and Carmen Alindog*,^[33] although the Court allowed the purchaser in a foreclosure sale to demand possession of the land during the redemption period, it