

## SECOND DIVISION

[ G.R. No.178758, April 03, 2013 ]

**MARCELINO AND VITALIANA DALANGIN, PETITIONERS, VS.  
CLEMENTE PEREZ, CECILIA GONZALES, SPOUSES JOSE BASIT  
AND FELICIDAD PEREZ, SPOUSES MELECIO MANALO AND  
LETICIA DE GUZMAN, AND THE PROVINCIAL SHERIFF OF  
BATANGAS, RESPONDENTS.**

### D E C I S I O N

#### **DEL CASTILLO, J.:**

Under the 1964 Rules of Court, notice of the execution sale to the judgment obligor was not required, or was merely optional; publication and posting sufficed. It was only in 1987 that the Court, via Circular No. 8 amending Rule 39, Section 18 of the Rules of Court, required that written notice be given to the judgment debtor.

This Petition for Review on *Certiorari*<sup>[1]</sup> assails the June 29, 2007 Decision<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. CV No. 82429 which dismissed the appeal of petitioners and affirmed the Amended Decision of the Regional Trial Court (RTC) of Batangas City, Branch 8, in Civil Case No. 2700.

#### ***Factual Antecedents***

Sometime in 1967, respondents Clemente Perez and Cecilia Gonzales (Perez spouses) sold to petitioners Marcelino and Vitaliana Dalangin (Dalangin spouses) a 2.3855<sup>[3]</sup>-hectare parcel of land. The latter, however, failed to pay in full despite demand, leaving an unpaid balance of P3,230.00. Thus, on April 6, 1971, the Perez spouses filed a Complaint<sup>[4]</sup> against the petitioners for recovery of a sum of money, which was docketed as Civil Case No. 1386 and raffled to Branch 2 of the City Court of Batangas.

Petitioners failed to file their Answer hence, they were declared in default and the Perez spouses were allowed to present their evidence *ex parte*.<sup>[5]</sup>

On June 15, 1971, the City Court of Batangas City, Branch 2, rendered its Decision<sup>[6]</sup> ordering petitioners to pay jointly and severally the Perez spouses P3,230.00 with legal interest from the filing of the Complaint until fully paid, plus P150.00 attorney's fees, and costs of suit. No appeal having been taken, the Decision became final and executory. Pursuant to this, a Writ of Execution<sup>[7]</sup> was issued.

The Provincial Sheriff of Batangas then levied upon and sold the petitioners' properties at auction. The execution sale was conducted on March 15, 1972, and on even date, a Certificate of Sale<sup>[8]</sup> was issued in favor of the Perez spouses covering

the following properties, to wit:

1. A parcel of riceland with Tax Declaration No. (TD) 6104 located in Dagatan, Taysan, Batangas with an area of 2.3855 hectares;
2. A parcel of riceland with TD 29 located in Bacao, Taysan, Batangas with an area of 5.031 hectares;
3. A parcel of riceland with TD 8693 located in Apar, Lobo, Batangas with an area of 22.5 hectares; and
4. A parcel of riceland with TD 9634 located in Apar, Lobo, Batangas with an area of 22.9161 hectares.

For failure to redeem, the sheriff executed a Final Deed of Conveyance<sup>[9]</sup> over said properties, and a Writ of Possession<sup>[10]</sup> was issued by the City Court on April 30, 1974. The Writ of Possession was received by Emmanuel Dalangin, petitioners' son. The Perez spouses thus came into possession of the 2.3855- hectare riceland and one-half of the 5.031-hectare property.

Twelve years after the City Court's issuance of the Writ of Possession, or on February 24, 1986, petitioners filed a case for annulment of the sheriff's sale in Civil Case No. 1386 which was docketed as Civil Case No. 2700 and raffled to Branch 8 of the RTC of Batangas City. In their Complaint,<sup>[11]</sup> petitioners prayed that the sheriff's sale, Certificate of Sale and the Final Deed of Conveyance be nullified and voided for lack of publication and notice of the sheriff's sale, and for inadequacy of the purchase price of the subject properties in the amount of P4,187.00. Petitioners likewise claimed that respondents illegally colluded and cooperated with each other to deprive them of their lands and unduly enrich the Perez spouses at their expense.

The Perez spouses filed a Motion to Dismiss<sup>[12]</sup> but the RTC deferred its resolution until after trial.<sup>[13]</sup> The Perez spouses thus filed their Answer<sup>[14]</sup> arguing that all proceedings covering the sheriff's sale are valid and binding, and reiterating the arguments in their Motion to Dismiss.

On August 22, 2003, the RTC rendered its Decision<sup>[15]</sup> upholding the validity of the sheriff's sale. It ruled that while it appears that there was no notice of sheriff's sale, petitioners nevertheless received copies of the Writ of Execution and the subsequent Writ of Possession, which should serve as adequate warning of the continued action on the case and the impending loss of their properties. The trial court concluded that the existence of other official documents on record covering the whole execution process, coupled with the presumption of regularity in the performance by the sheriff of his official duties, outweigh petitioners' argument of lack of notice. It added that petitioners' taking action only after 12 years from the service of the Writ of Possession upon them raises serious doubts as to their claimed ignorance of the sheriff's sale.

On December 16, 2003, the trial court issued an Amended Decision,<sup>[16]</sup> decreeing as follows:

WHEREFORE, the plaintiffs' complaint is hereby DISMISSED with respect to the two properties which were actually placed in the defendants' possession by virtue of the Writ of Possession issued by the City Court, in connection with Civil Case No. 1386, to wit:

(1) 'A parcel of riceland with TD No. 6104 located at Dagatan, Taysan, Batangas, bounded on the N – Canuto Ampuro, on the E – Creek; on the S – Valeriana Gonzales and W – Cecilia Gonzales with an area of 27,855 square meters, more or less and with an assessed value of Php1,910'; and

(2) The Northeastern one-half portion of the following lot:  
'A parcel of riceland with TD No. 29 located at Bacao, Taysan, Batangas, bounded on the N – Mrs. Felicidad Magtibay; E – Fausto Manalo; S – Raymundo Bacao; W – Batalan River with an area of 50[,]~~4~~10 square meters, more or less with an assessed value of Php1,510.00';

Of the other lots mentioned in said Writ of Possession, the Municipal Assessors of Taysan, Batangas and Lobo, Batangas are hereby ordered to cancel whatever tax declarations relative to the following properties that may be in the names of the herein defendants as a consequence of said Civil Case No. 1386, but the actual possession of which have not been delivered to or taken by them, and to issue new ones in the names of the herein plaintiffs Marcelino Dalangin and Vitaliana Dalangin, to wit:

(1) 'A parcel of land (riceland) caingin, located at Apar, Lobo, Batangas, with TD No. 8693, bounded on the N – Miguel Bagsic' psc-172200; S – Nicolas Buisan, E – Vitaliano Manalo, W – Mahabang Parang River and with an area of 225[,]~~0~~00 square meters more or less, with an assessed value of Php6,750.00';

(2) 'A parcel of land (riceland) caingin, with TD No. 9634 located at Apar, Lobo, Batangas, bounded on the N – Nicolas Buisan; on the S – Nicolas Buisan, E – Nicolas Buisan; and W – Aurora Manalo and Sps. Marcelino Dalangin and Vitaliana Dalangin with an area of 229[,]~~1~~61 square meters, more or less, with an assessed value of P4,100'.

(3) The Southeastern one-half portion of the following lot:  
'A parcel of riceland with TD No. 29 located at Bacao, Taysan, Batangas, bounded on the N – Mrs. Felicidad Magtibay; E – Fausto Manalo; S – Raymundo Bacao; W – Batalan River with an area of 50[,]~~1~~40 square meters, more or less with an assessed value of Php1,510.00';

No pronouncement as to costs.

SO ORDERED.<sup>[17]</sup>

### ***Ruling of the Court of Appeals***

Petitioners appealed to the CA insisting on the irregularity of the sheriff's sale and subsequent delivery of possession to the Perez spouses of the parcel of land covered

by TD 6104 and the northeastern one-half portion of the land covered by TD 29, for lack of notice.

On June 29, 2007, the CA rendered the assailed Decision, the decretal portion of which reads:

**WHEREFORE**, the appeal is **DISMISSED**. The assailed **Amended Decision**, dated December 16, 2003, of the Regional Trial Court of Batangas City, Fourth Judicial Region, Br. 8, in Civil Case No. 2700, is hereby **AFFIRMED in toto**. No special pronouncement as to costs.

**SO ORDERED.**<sup>[18]</sup>

Reiterating the trial court's pronouncements, the CA held that the presumption of regularity of the proceedings covering the execution sale and the sheriff's performance of his official functions outweigh and prevail over the self-serving allegations and bare denials of petitioners that they were not served with notice of the sheriff's sale. In this regard, the CA found that petitioners failed to prove their allegation that they were not served with the notice of sheriff's sale. Also, it ruled that the fact that the entire record of the sheriff's proceedings on the sale could no longer be located given the lapse of 12 years should not be taken against the respondents.

The CA added that since petitioners received copies of the adverse Decision, as well as the subsequent Writs of Execution and Possession, they are thus considered to have been sufficiently warned of the forthcoming consequences. But, instead of acting upon the case, petitioners failed and refused to follow up on the same, even after they were dispossessed of the Dagatan, and half of the Bacao, properties after the same were placed in the possession of the Perez spouses. Petitioners chose to stay silent, and it was only after 12 years did they come to court, via Civil Case No. 2700, to question the sheriff's proceedings and complain of their dispossession. The CA thus declared petitioners barred by estoppel and laches.

Petitioners thus filed the present Petition.

### **Issue**

In this Petition, petitioners submit the following lone issue for the Court's resolution:

DID THE HONORABLE COURT OF APPEALS CORRECTLY APPLY THE PROVISIONS OF RULE 39, SECTION 15 OF THE RULES OF COURT?<sup>[19]</sup>

### ***Petitioners' Arguments***

In seeking a reversal of the assailed Decision, petitioners contend that under Rule 39, Section 15 of the 1997 Rules of Civil Procedure, a written notice of sale on execution should have been given to them. The lack of this notice effectively converted the auction proceedings into a private sale which is prohibited under the law. They argue that they did not waive this requirement, and the absence thereof

rendered the proceedings taken thereon as null and void.

Petitioners argue that their receipt of the corresponding Writs of Execution and Possession cannot overcome the requirement of notice. They insist that the lack of notice of the sheriff's sale renders the same of no effect.

### ***Respondents' Arguments***

Apart from echoing the CA pronouncement, respondents,<sup>[20]</sup> in their respective Comments,<sup>[21]</sup> argue that petitioners should not be permitted to take advantage of the unavailability of records covering the sheriff's sale. They point to the fact that during trial, then Batangas Provincial Sheriff Atty. Abratigue's testimony regarding the circumstances of the sheriff's sale was stricken off the record on the initiative of the petitioners. For this reason, the issue covering the issuance of notice to them could not be resolved by the trial court. To the respondents, this constitutes willful suppression of evidence which is adverse to petitioners' cause.

Moreover, respondents claim that under the 1964 Rules then applicable to the sheriff's sale which was held on March 15, 1972, particularly Rule 39, Section 18, notice to the judgment obligor was not required. Respondents argue that the present Rule under the 1997 Rules of Civil Procedure,<sup>[22]</sup> requiring that written notice of the sale be given to the judgment obligor three days before the sale, should not retroactively apply to this case.

### **Our Ruling**

The Court affirms.

*The applicable rule at the time of the execution sale on March 15, 1972 is Rule 39, Section 18 of the 1964 Rules of Court. This rule does not require personal written notice to the judgment debtor.*

At the time of the execution sale on March 15, 1972, the applicable rule is Rule 39, Section 18 of the 1964 Rules of Court. It states:

Sec. 18. Notice of sale of property on execution. – Before the sale of property on execution, notice thereof must be given as follows:

(a) In case of perishable property, by posting written notice of the time and place of the sale in three public places in the municipality or city where the sale is to take place, for such time as may be reasonable, considering the character and condition of the property;

(b) In case of other personal property, by posting a similar notice in three public places in the municipality or city where the sale is to take place, for not less than five (5) nor more than ten (10) days;