

THIRD DIVISION

[G.R. No. 190122, January 10, 2011]

**SPOUSES ISAGANI AND DIOSDADA CASTRO, PETITIONERS, VS.
SPOUSES REGINO SE AND VIOLETA DELA CRUZ, SPOUSES
EDUARDO AND CHARITO PEREZ AND MARCELINO TOLENTINO,
RESPONDENTS.**

D E C I S I O N

CARPIO MORALES, J.:

For the Court's consideration is the propriety of the issuance of a writ of preliminary *mandatory* injunction in favor of respondent Spouses Regino Se and Violeta dela Cruz (Spouses dela Cruz).

Respondent Spouses Eduardo and Charito Perez (Spouses Perez) obtained a P250,000 loan from Spouses Isagani and Diosdada Castro (petitioners) on November 15, 1996, to secure which they executed a real estate mortgage in petitioners' favor covering an unregistered 417 square meter parcel of land, located in San Isidro, Hagonoy, Bulacan, covered by Tax Declaration (TD) No. 01844 (the property).

Respondent Spouses Perez having failed to settle their loan, petitioners extrajudicially foreclosed the mortgage and, as the highest bidder at the public auction, bought the property on February 4, 1999. It turned out that *before* the foreclosure or sometime in 1997 respondent Spouses Perez, contrary to a provision of the real estate mortgage, sold the property to respondent Spouses dela Cruz who had in fact caused the cancellation of TD No. 01844 by TD No. 01892 in their name on August 15, 1997.

Petitioners thus filed on April 8, 1999 a complaint against herein two sets of respondent Spouses, for annulment of Deed of Sale and TD No. 01892^[1] and damages before the Malolos Regional Trial Court (RTC). Respondent Marcelino Tolentino, Municipal Assessor of Hagonoy, Bulacan was impleaded as defendant. The complaint was raffled to Branch 7 of the RTC.

By respondent Spouses dela Cruz's allegation, before buying the property, they inspected it and found no improvements thereon that would put them on guard against the integrity of the TD of the sellers-Spouses Perez which TD, contrary to petitioners' claim, bore no annotation of the mortgage. They had in fact constructed a house on the property in the course of which they were approached by petitioners who informed them of an existing mortgage thereover, but as petitioners did not present any document to prove it, they paid no heed to the information.

During the pendency of petitioners' complaint against respondents spouses, petitioners filed an *ex-parte* motion before Branch 16 of the RTC for the issuance of

a writ of possession over the property by virtue of the foreclosure of the mortgage of the sale to them of the property. [2] Petitioners' motion was granted and a writ of possession dated August 2, 2001 was issued and enforced against respondent Spouses dela Cruz who were evicted from the property.

On December 7, 2002, petitioners amended, with leave of court, their complaint, alleging that, *inter alia*, respondent Spouses Perez failed to redeem the mortgage within the reglementary period.

In their Answer to the Amended Complaint, respondent Spouses dela Cruz prayed for the issuance of a writ of preliminary *mandatory* injunction to restore them to physical possession of the property, which prayer Branch 7 of the RTC granted by Order of October 29, 2004 in this wise:

. . . It is not disputed that the Sps. Isagani Castro and Diosdada Castro, herein plaintiffs, were placed in possession of the subject property by virtue of a writ of possession issued by Branch 16 of the Court. This writ of possession commanded the sheriff to require the spouses Eduardo Perez and Charito Lopez and all persons claiming rights under them to vacate subject property and surrender possession thereof to spouses Castro. At that time, the Spouses Regino Se and Violeta dela Cruz were in possession of the property as owners thereof, having already purchased the same from the Sps. Castro. Their evidence of ownership is Tax Declaration No. 01892 of the Office of the Municipal Assessor of Hagonoy, Bulacan, the property being still an unregistered property. They were not claiming rights under the spouses Perez. They were and still are the owners in their own right. Hence, the writ of possession issued was improperly implemented and under Art. 539 of the Civil Code, they must be restored to said possession by the means established by the laws and the Rules of Court. The writ of preliminary mandatory injunction prayed for is undeniably one of the means established by the laws and the Rules of Court. [3] (underscoring supplied)

Petitioners' motion for reconsideration of the trial court's Order of October 29, 2004 was denied by Order of March 5, 2007, hence, they filed a petition for certiorari before the Court of Appeals. Finding no grave abuse of discretion in the issuance of the Order, the appellate court denied petitioners' petition, by Decision of September 14, 2009. [4]

Hence, the present petition.

The trial court anchored its assailed Order granting the writ of preliminary mandatory injunction on Article 539 of the Civil Code. The Article reads:

Art. 539. Every possessor has a right to be respected in his possession; and should he be disturbed therein, he shall be protected in or restored to said possession by the means established by the laws and the Rules of Court.