

SECOND DIVISION

[G.R. NO. 164036, October 19, 2007]

**SPOUSES SANTIAGO AND MA. CONSUELO CARLOS,
PETITIONERS, VS. THE COURT OF APPEALS, REGIONAL TRIAL
COURT, BRANCH 204, AT MUNTINLUPA CITY, AND LAND BANK
OF THE PHILIPPINES, RESPONDENTS.**

DECISION

QUISUMBING, J.:

This petition for review assails the Decision^[1] dated June 16, 2004 in CA-G.R. SP No. 82571 of the Court of Appeals, which dismissed the petition for certiorari against the Orders^[2] dated June 25, 2003, January 5, 2004 and February 23, 2004 in LRC Case No. 03-021 of the Regional Trial Court (RTC), Branch 204, Muntinlupa City. No motion for reconsideration was filed by the petitioners insofar as the June 16, 2004 decision herein assailed is concerned.

The antecedent facts in this controversy are as follows:

Respondent Land Bank of the Philippines (Land Bank) foreclosed petitioner-spouses' mortgaged properties for their failure to pay their obligation. Land Bank was the highest bidder at the foreclosure sale. After the lapse of the redemption period and the consolidation of the properties' title in its name, Land Bank filed an *Ex Parte* Petition for Issuance of Writ of Possession with the RTC of Muntinlupa City.^[3]

Finding the petition to be sufficient in form and substance, the trial court issued an order requiring all interested parties to appear on the date of the hearing and to show cause why the petition should not be granted.^[4] A copy of the order was sent to petitioners.

Petitioners filed a consolidated motion to intervene and to dismiss the petition on the grounds of lack of jurisdiction and forum shopping.^[5] Petitioners alleged that there is a pending case for the declaration of nullity of the mortgage and foreclosure sale, docketed as Civil Case No. 00-181, with the RTC, Branch 256 also in Muntinlupa City.

On June 25, 2003, the trial court denied the motion to intervene and to dismiss.^[6] It held that there was no forum shopping because the resolution of the case would not amount to *res judicata* in Civil Case No. 00-181, and that the petition for the issuance of the writ of possession to Land Bank could proceed independently of any action for annulment of the sale.

Petitioners moved for reconsideration but it was denied.^[7]

In the meantime, the trial court continued to hear the main petition. In the scheduled hearing on September 9, 2003, Land Bank failed to appear thus the trial court dismissed the petition.^[8]

On September 16, 2003, Land Bank moved for reconsideration, which was set for hearing on September 25, 2003. Petitioners received a copy of the motion on the day of the hearing. Petitioners opposed the motion for being a mere scrap of paper since it failed to comply with the three-day prior notice required under Section 4,^[9] Rule 15 of the Rules of Court. However, on January 5, 2004, the trial court granted reconsideration citing the policy of the Court to set aside technical rules of procedure in the interest of substantial justice and because a petition for a writ of possession may be granted *ex parte*.^[10]

Petitioners moved for reconsideration but the same was denied on February 23, 2004. Thereafter, they filed with the Court of Appeals a petition for certiorari assailing the June 25, 2003, January 5, 2004 and February 23, 2004 Orders of the trial court.

On June 16, 2004, the Court of Appeals dismissed the petition. It held that a motion and/or petition for the issuance of a writ of possession is an exception to the three-day notice rule, and that the trial court can hear it *ex parte*.^[11]

Hence, the instant petition, which raises the following issues:

I.

IS THE ALLEGED "EX-PARTE" NATURE OF A PROCEEDING UNDER ACT 3135, AS AMENDED, MEANT TO GAG A MORTGAGOR OF AT LEAST AN OPPORTUNITY TO OBJECT TO OR BE HEARD THEREON, AND THEREFORE VIOLATIVE OF THE DUE PROCESS CLAUSE OF THE CONSTITUTION?

II.

ARE THE RULES OF COURT, SPECIFICALLY THE RULES ON MOTION AND SERVICE AND EXISTING JURISPRUDENCE ON THE MATTER APPLICABLE IN A PROCEEDING FOR ISSUANCE OF A WRIT OF POSSESSION FILED AFTER A FORECLOSURE?

III.

ARE THE LAWS, RULES AND JURISPRUDENCE ON FINALITY OF JUDGMENT, THEIR EFFECTS, SPECIFICALLY ON THE JURISDICTION OF COURTS, APPLY IN A WRIT OF POSSESSION PROCEEDINGS?^[12]

Simply put, the main issue is whether the Court of Appeals erred in upholding the Orders of the trial court issued on June 25, 2003, January 5, 2004 and February 23, 2004.

Petitioners assert that they were denied due process of law when they were not given a three-day prior notice, which is contrary to Section 1,^[13] Article III of the Constitution. Petitioners consider Land Bank's motion for reconsideration a mere