

SECOND DIVISION

[G.R. NO. 155403, March 31, 2006]

HONORIO TORRES, JR., PETITIONER, VS. THE HONORABLE ANTONIO M. ESTEVES, PRESIDING JUDGE, REGIONAL TRIAL COURT, FIRST JUDICIAL REGION, BRANCH 5, BAGUIO CITY; NESTOR F. RIMANDO, SHERIFF IV, BAGUIO CITY; AND THE SPOUSES RAMON T. TORRES AND AGNES TORRES, RESPONDENTS

DECISION

GARCIA, J.:

In this special civil action for certiorari and prohibition with application for a writ of preliminary injunction under Rule 65 of the Rules of Court, petitioner Honorio Torres, Jr. implores the Court to nullify and set aside, on ground of grave abuse of discretion, the Orders dated August 8, 2002^[1] and September 18, 2002^[2] of the respondent judge in *Civil Case No. 4591-R* as well as the writ of possession issued therein. The prohibition aspect of the petition seeks to enjoin the respondent judge from taking further proceedings in said case and for the other respondents from committing further acts of dispossession against the petitioner.

The facts:

Petitioner's father, Honorio T. Torres, Sr., is the elder brother of herein private respondent Ramon T. Torres. During his lifetime, Honorio, Sr. and his brother Ramon, together with their other siblings, were co-owners of a lot with an area of 1,601 square meters located at Upper Mabini, Baguio City, then covered by Transfer Certificate of Title (TCT) No. T-35524 of the Registry of Deeds of Baguio City.

Sometime in 1998, Honorio, Sr., *via* a deed of donation, donated his share on the aforementioned lot consisting of 304 square meters to his two sons, Michael Torres and herein petitioner Honorio, Jr. Said 304 square meters portion is the property subject of this case.

No one bothered to register the aforementioned deed of donation during the lifetime of Honorio, Sr. who appeared to have died on July 5, 1990.^[3] More than eight (8) years later or on January 27, 1999, the Register of Deeds of Baguio City issued TCT No. T-70954^[4] in the names of herein petitioner Honorio, Jr. and his brother Michael Torres over the subject property. On its face, TCT No. T-70954 was entered in the Registry of Deeds of Baguio City on January 27, 1999 at 2:35 p.m.

The following day, January 28, 1999, Honorio, Jr. mortgaged his one-half share or 152 square meters of the subject property to his uncle, herein private respondent Ramon T. Torres, and the latter's wife, Agnes Torres. The covering Deed of Real Estate Mortgage^[5] recites, among other things, as follows:

That, for and in consideration of ONE MILLION EIGHT HUNDRED SIXTY NINE THOUSAND SIX HUNDRED FORTY & 78/100 (P1,869,640.78) PESOS, Philippine Currency, obtained by HONORIO TORRES, JR. from the MORTGAGEE, RAMON T. TORRES, the MORTGAGOR does hereby transfer and convey by way of mortgage unto the MORTGAGEE, his successors or assigns the parcel of land, pertaining to the MORTGAGOR'S share which is 50.00% which is equivalent to ONE HUNDRED FIFTY TWO (152) SQUARE METERS over the whole property of containing an area of THREE HUNDRED FOUR (304) SQUARE METERS, together with all the buildings and improvements now existing or which may hereafter be erected or constructed thereon, xxx

The mortgage document further provides that in the event the petitioner, as mortgagor, fails to pay the mortgage indebtedness, the mortgagee may foreclose the mortgage, sell the mortgaged property in a public auction in accordance with Act No. 3135, as amended, with the mortgagor (*i.e.*, petitioner) expressly waiving his right of redemption.

Due to petitioner's failure to pay the mortgage debt, herein private respondents, the spouses Ramon Torres and Agnes Torres, filed with the Baguio City Sheriff's Office a petition for extrajudicial foreclosure under Act No. 3135, as amended. Pursuant thereto, a Sheriff's Notice of Auction Sale^[6] was issued, therein announcing the auction sale of the subject property on January 11, 2000 at ten o'clock in the morning. In part, the notice reads:

WHEREAS, in a certain document executed on January 28, 1999 by Honorio Torres, Jr., as mortgagor with the conformity of Michael Torres, for and in consideration of the sum of P1,869,640.78 caused to be transferred and conveyed by way of mortgage in favor of Spouses Ramon and Agnes Torres his one-half (1/2) undivided share in the above described property consisting of ONE HUNDRED FIFTY TWO (152) SQUARE METERS together with the building improvements erected thereon; ^[7]

Soon, petitioner filed against the spouses Torres, the Sheriff of Baguio City and the City Register of Deeds a complaint^[8] for *Declaration of Nullity of Real Estate Mortgage and the Sheriff's Notice of Auction Sale and Damages With Prayer for Writ of Preliminary Injunction and Temporary Restraining Order* before the Regional Trial Court (RTC) of Baguio City, which complaint was thereat docketed as Civil Case No. 4591-R.

On January 7, 2000, even before the complaint could be raffled to the proper branch of the RTC, petitioner filed in Civil Case No. 4591-R an *Ex-Parte Motion for Special Raffle and for the Issuance Ex-Parte of a Temporary Restraining Order*. ^[9]

Records show that on January 10, 2000, the complaint was raffled to Branch 5 of the RTC presided by the respondent judge. The following day, January 11, 2000, petitioner filed with the Office of the Executive Judge an *Urgent Ex-Parte Motion for Issuance of a 72-hour Temporary Restraining Order*,^[10] thereunder alleging, as follows:

1. That the above-entitled case was raffled yesterday to Branch 5 of this Court and that the said Court has yet to schedule the initial hearing for the preliminary injunction; hence this ex-parte Motion is being addressed to the Office of the Executive Judge;
2. That the foreclosure sale will be conducted any time this day by the respondent Sheriff, and in order not to negate the possibility of the parties amicably settling their differences and thresh out the issues surrounding the case, there is an urgent need to stop the scheduled foreclosure sale scheduled today, January 11, 2000;
3. That there is great possibility of the parties for amicable settlement as the parties hereto are close relatives, they being uncle and nephew to each other;
4. That since time is of the essence, and that the respondents could not be served immediately of the proper notice, it is imperative that the Honorable Executive Judge pursuant to Administrative Circular No. 20-95 of the Supreme Court issue a Restraining Order good for 72 hours and directing the respondent sheriff to cease and desist from conducting the foreclosure sale scheduled today, and preserve status quo in the meantime that the parties will have been given the chance to settle their differences.

In an Order^[11] dated January 11, 2000, the Executive Judge denied petitioner's aforementioned motion, explaining thus:

It appears, as gathered by undersigned, that the Honorable Judge of Branch 5, this Court, Judge Antonio Esteves, has set the hearing of the writ of preliminary injunction sometime on January 18, 2000, and he has therefore acquired definitive jurisdiction over this case. Therefore, Judge Esteves alone had and still has the prerogative to act on all incidents regarding this case. That he has not issued the Temporary Restraining Order prayed for by plaintiffs was an exercise of his judicial discretion. The same cannot be defeated by the subsequent actions of any other judge of the same court, not even the executive judge.

WHEREFORE, the motion for the issuance of a 72-hour temporary restraining order as executive judge should be, as it is, **DENIED**.

SO ORDERED.

Meanwhile, the Sheriff proceeded with the scheduled public auction sale on January 11, 2000 at which the herein private respondents were the sole and highest bidders with a bid of P2,800,000.00. On the same day, January 11, 2000, a Sheriff's Certificate of Sale^[12] was issued in favor of private respondents. Thereafter, or on February 3, 2000, the Sheriff, citing the provision in the deed of real estate mortgage relative to the mortgagor's express waiver of his right of redemption,^[13] issued a *Final Certificate of Sale* ^[14] in favor of the private respondent spouses.

On account of the foregoing developments, petitioner filed in *Civil Case No. 4591-R an Amended Complaint*,^[15] *this time for Declaration of Nullity of Real Estate*

Mortgage; Annulment of Sheriff's Certification of Sale; Cancellation of Memorandum of Encumbrances ... on TCT No. E-70954 ... and Damages.

On January 21, 2002, petitioner filed in the same case an *Application and Motion for the Issuance of Preliminary Mandatory and Prohibitory Injunction with Prayer for the Issuance Ex-Parte of a Temporary Restraining Order*.^[16] For their part, the private respondents filed, on April 29, 2002, a *Motion for the Issuance of a Writ of Possession*.^[17] Resolving the private respondents' motion, the respondent judge, as Presiding Judge of RTC Branch 5 to which Civil Case No. 4591-R was raffled, issued the herein first assailed **Order dated August 8, 2002**,^[18] granting private respondents' motion for a writ of possession. Says the respondent judge in his challenged Order:

The [respondent] spouses Ramon Torres and Agnes Torres filed a motion for the issuance of a writ of possession through their counsel and states the following contention:

1. On January 28, 1999, [petitioner] HONORIO TORRES, JR., with the conformity of MICHAEL TORRES entered into a REAL ESTATE MORTGAGE with [respondent] spouses Ramon and Agnes Torres of one half undivided share on the lot covered by Transfer Certificate of Title No. T-70954, issued by the Register of Deeds of the City of Baguio, with an area of ONE HUNDRED FIFTY TWO (152) SQUARE METERS, MORE OR LESS, together with the improvements thereon for and in consideration of the amount of ONE MILLION EIGHT HUNDRED SIXTY NINE THOUSAND SIX HUNDRED FORTY & 78/100 (P1,869,640.78) PESOS, Philippine Currency, to be paid within SIX (6) months from the date of the execution of mortgage.
2. On the due date, [petitioner] failed to pay the said loan, hence an Extra Judicial Petition of Sale was filed by Spouses Ramon and Agnes Torres ... to satisfy the mortgage indebtedness ... which as of November 30, 1999 amounts to P2,145,767.98.
3. That the property subject of this case was sold to [respondents] during the foreclosure sale last January 11, 2000 and was issued the corresponding Sheriff's Certificate of Sale which is attached to the record.
4. Considering the waiver of the 1-year redemption period in the Real Estate Mortgage, a Sheriff's Final Certificate of Sale was issued on February 3, 2000. A copy of which is attached to the record.
5. The Capital Gains Tax and The Documentary Stamp Tax were already PAID by the herein [respondents] and the Title of the aforesaid mortgaged property was already consolidated to the Spouses Ramon and Agnes Torres.

The [petitioner], by and thru its counsel opposed the issuance of the Writ of Possession on the following grounds and considerations:

1. On January 11, 2000, [petitioner's] application for the Writ of Preliminary Injunction with prayer for the issuance ex-parte of a 72-hour Temporary Restraining Order to enjoin the Extra-Judicial foreclosure sale of Transfer Certificate of Title No. T-70954 which is the subject of this case was denied.
2. On February 7, 2000, [petitioner] filed suit for Judicial declaration as being null and void ab initio the following: a) the Real Estate Mortgage entered into by and between the [petitioner] as the mortgagor and the [respondents] as the mortgagees on January 28, 1999 for obvious lack of, or absence of cause or consideration — the sum of money being then applied for was not received by the [petitioner]; b) the Sheriff's Extra Judicial Foreclosure Sale conducted and the Sheriff's Certificate of Sale issued without factual and legal basis; c) Cancellation of Entry No. 263803-28-239 (Real Estate Mortgage) and the Entry No. 230-30-7 (Sheriff's Certificate of Sale) recorded/annotated on the Memorandum of Encumbrances of said TCT No. T-70954 Registry of Deeds, Baguio City.
3. The [petitioner] admitted having [signed] the Real Estate Mortgage in question and alleged that to enable the [respondents] first to register with the Register of Deeds the Mortgage Document as a condition before the grant of loan of P1,869,640.78 to the [petitioner]. The Real Estate Mortgage was intended by the parties thereto to secure the repayment of the loan (P1,869,640.78) being then applied by [petitioner].
4. The subject loan of P1,869,640.78 of the Real Estate Mortgage was not given by the [respondents] to the [petitioner] instead they had shown in their exhibits as payment the bank checks and check vouchers amounting to P1,136,000.00 in the name of Leonora Torres (mother of the [petitioner]) and quote "For the advances she had been receiving from the [respondent], Leonora Torres, ceded, by way of sale her undivided ½ share in the property of the [petitioner]. That to secure payment of Leonora Torres' obligation to the [respondents] which aggregated by the time to P1,869,640.78, [petitioner] agreed to assume in consideration of the title transfer to him, that [petitioner] shall also execute a Deed of Real Estate Mortgage covering said portion that will be placed in his name in favor of the [respondent] Ramon Torres and registered simultaneously on the title that may be issued in the name of the [petitioner] and his brother.
5. On February 18, 1988 Honorio Torres Sr. and Leonora Torres (parents of the [petitioner]) signed a Deed of Donation in favor of their sons, [petitioner] and Michael Torres the entire property consisting of 304 square meters now under TCT No. T-70954.
6. Leonora Torres cannot validly sell ½ pertaining to her alleged conjugal property to the [respondents] in 1995 and 1997 because of the presence of the Deed of Donation. Likewise the Deed of Sale