

SECOND DIVISION

[G.R. NO. 147820, March 18, 2005]

**SPOUSES RUBEN SANTIAGO AND INOCENCIA SANTIAGO,
PETITIONERS, VS. MERCHANTS RURAL BANK OF TALAVERA,
INC., RESPONDENT.**

D E C I S I O N

CALLEJO, SR., J.:

On April 12, 2000, respondent Merchants Rural Bank of Talavera, Inc. filed an *Ex Parte* Petition with the Regional Trial Court (RTC) of Cabanatuan City, for the issuance of a writ of possession over the two parcels of land covered by Transfer Certificate of Title (TCT) Nos. NT-196197 and NT-187791 located in San Mariano, Sta. Rosa, Nueva Ecija. The respondent alleged therein, *inter alia*, that petitioner spouses Ruben and Inocencia Santiago executed a "Deed of Real Estate Mortgage," in its favor, over the said properties and all the improvements thereon, as security for the payment of the separate loans of P500,000.00 and P120,000.00, respectively. It averred that when the petitioner spouses failed to pay their loan, it foreclosed the real estate mortgage extrajudicially. At the sale at public auction of the property on February 16, 1998, the respondent was the highest bidder. The sheriff executed separate certificates of sale over the properties in the name of the respondent. These certificates were registered with the Register of Deeds on March 6, 1998 and October 28, 1998, respectively. When the petitioner spouses failed to redeem the property within the prescribed period, the titles over the property were then consolidated in its favor. The respondent bank prayed that:

WHEREFORE, premises considered, it is respectfully prayed of this Honorable Court, that a writ of possession be issued, commanding the Ex-Officio Sheriff of this Court and/or of his deputies to place the petitioner and/or its authorized representative in possession of that parcels of land covered by TCT No. NT-196197 with an area of 337 square meters, more or less, of the Registry of Deeds for the Province of Nueva Ecija, and TCT No. NT-187791 with an area of 345 square meters, more or less, the Registry of Deeds for the Province of Nueva Ecija, including all the improvements erected thereon and eject therefrom all adverse occupants, more particularly Sps. Ruben & Inocencia Santiago and their privies and/or other persons claiming under him/her upon the filing of [the] prescribed fees or such other amounts that may be deemed reasonable by this Court.

Petitioner prays for such other remedies just and equitable under the premises.^[1]

Although aware of the said petition, the petitioner spouses failed to file their comment thereon. Instead, they requested the respondent to give them more time to repurchase their properties.

During the hearing of the petition on July 18, 2000, the petitioner spouses, through counsel, appeared and prayed for more time to raise the money for the repurchase of the property. The respondent's counsel manifested that it was open to negotiation, but insisted that the petition be submitted for the court's resolution since a considerable amount of time had already lapsed from the time the petition was filed. The petitioners' counsel agreed to this proposition. The RTC forthwith declared that the petition was submitted for its resolution.^[2] However, the petitioner spouses failed to repurchase the property.

On September 1, 2000, the trial court issued an Order^[3] granting the petition and ordered the clerk of court to issue a writ of possession in favor of the respondent. The clerk of court complied and issued a Writ of Possession on September 4, 2000. Hence, the sheriff requested the petitioner spouses to vacate the property within three (3) days from notice thereof, but the latter refused to do so. Instead, they filed a petition for a writ of *certiorari* with the Court of Appeals (CA) to nullify the Order of the RTC and the Writ of Possession issued by the clerk of court, with prayer for injunctive relief. The petitioner spouses alleged therein that:

... [T]he court *a quo* committed grave abuse of discretion when it issued the Order dated 01 September 2000 granting respondent Rural Bank's petition for the issuance of writ of possession "without any evidence being marked and formally offered in support of the petition."^[4]

On February 5, 2001, the CA rendered judgment^[5] dismissing the petition for lack of merit. It, likewise, denied the petitioners' motion for reconsideration of the decision on April 6, 2001.

Hence, the petitioners filed their petition for review on *certiorari* in this Court, claiming that:

NOTWITHSTANDING ITS FINDING THAT THERE WAS INDEED NO EVIDENCE (WHETHER TESTIMONIAL OR DOCUMENTARY) SUBMITTED, MARKED, AND OFFERED BY PRIVATE RESPONDENT TO SUPPORT ITS PETITION IN THE COURT A QUO, [THE] COURT OF APPEALS UPHELD THE VALIDITY OF THE ASSAILED ORDERS.^[6]

The petitioners aver that the respondent failed to formally offer any documentary and testimonial evidence to support its petition for a writ of possession; hence, the RTC committed grave abuse of its discretion amounting to excess or lack of jurisdiction in granting the same. The petitioners assert that, unless documentary and testimonial evidence are offered in evidence and admitted by the trial court, the same should not be considered by it in resolving the petition. Besides, the assailed Order of the RTC does not conform to Section 1, Rule 36 of the Revised Rules of Court which requires that a final order must state clearly and distinctly the facts and the law on which it is based.

In its comment on the petition, the respondent averred that:

Furthermore, foreclosure proceedings has in its favor the presumption of regularity, it is for the petitioners to offer evidence to dispute that presumption to nullify the right created by the said foreclosure

proceedings. Contrary to the claim of petitioners, a petition for issuance of writ of possession is not an action to deprive a person of his property, instead, it is an action wherein the Court intervenes primarily to aid in effecting the delivery of a property to its rightful owner. As correctly pointed out by the Court of Appeals in its assailed Decision, there is no law or procedure making the practice of making and formally offering documentary evidence in a petition for issuance of writ mandatory. The *ex parte* nature of the petition makes said practice unnecessary. In fact, it had been repeatedly held by the Honorable Supreme Court that issuance of writ of possession to a purchaser in an extrajudicial foreclosure is merely a ministerial function of the Court which lead us to the inference that issuance of writ of possession in such cases does not constitute exercise of discretion. Therefore, the same not being subject to court's discretion, there can be no grave abuse of discretion to speak of.^[7]

The petition is denied for lack of merit.

We note that the CA took cognizance of the petition for *certiorari* with a plea for injunctive relief filed by the petitioners assailing the Order of the RTC dated September 1, 2000. The appellate court erred in acting on the petition. This is so because under Section 8 of Act No. 3135, the remedy of the petitioners from the assailed order of the RTC was to file a petition to set aside the sale and the cancellation of the writ of possession. The aggrieved party may thereafter appeal from any disposition by the court on the matter.^[8] Although the petitioners alleged in their petition that the RTC acted with grave abuse of discretion amounting to excess or lack of jurisdiction in issuing the assailed order, they nevertheless failed to establish their claim.

The petitioners' recourse to Rule 65 of the Revised Rules of Court in the CA was inappropriate even though the Sheriff had demanded that they vacate the property. Section 8 of Act No. 3135 mandates that even if an appeal is interposed from an order granting a petition for a writ of possession, such order shall continue to be in effect during the pendency of an appeal.

Sec. 8. Setting aside of sale and writ of possession. – The debtor may, in the proceedings in which possession was requested, but not later than thirty days after the purchaser was given possession, petition that the sale be set aside and the writ of possession cancelled, specifying the damages suffered by him, because the mortgage was not violated or the sale was not made in accordance with the provisions hereof, and the court shall take cognizance of this petition in accordance with the summary procedure provided for in section one hundred and twelve of Act numbered Four hundred and ninety-six; and if it finds the complaint of the debtor justified, it shall dispose in his favor of all or part of the bond furnished by the person who obtained possession. *Either of the parties may appeal from the order of the judge in accordance with section fourteen of Act Numbered Four hundred and ninety-six; but the order of possession shall continue in effect during the pendency of the appeal.*^[9]

The general rule is that for a writ of *certiorari* to issue, the petitioners must establish that they had no remedy of appeal or any plain, adequate and speedy remedy in the ordinary course of law. Appeal and *certiorari* are mutually exclusive. In the present case, the petitioners had the right to file a petition to set aside the sale and writ of possession issued by the court and to appeal from an adverse ruling. The petitioners failed to file the said petition and opted to file their petition for *certiorari* in the CA. Hence, they were barred from filing a petition for *certiorari* from the assailed order of the trial court and the writ of possession issued by it.

We reject the petitioners' contention that they were deprived of their right to due process when the trial court granted the respondent's petition for a writ of possession despite the latter's failure to adduce documentary and testimonial evidence in support thereof.

The proceeding in a petition for a writ of possession is *ex parte* and summary in nature. It is a judicial proceeding brought for the benefit of one party only and without notice by the court to any person adverse of interest.^[10] It is a proceeding wherein relief is granted without an opportunity for the person against whom the relief is sought to be heard.^[11] Hence, the RTC may grant the petition in the absence of the mortgagor, in this case, the petitioners.

The petitioners have not cited any law or rule requiring that documentary and testimonial evidence be first adduced in support of a petition for a writ of possession before the trial court may act upon and grant the same.

The petitioners contend that a petition for a writ of possession may be granted only if the respondent offers in evidence a new TCT in its name. In support of this, the petitioners rely on the statement of the Court in *F. David Enterprises, Inc. v. Insular Bank of Asia and America*,^[12] that "[u]pon proper application and proof of title, the issuance of a writ of possession becomes a ministerial duty of the court." The petitioners' reliance on the said statement, however, is misplaced.

Section 7 of Act No. 3135 merely requires that a petition for the issuance of a writ of possession shall be in the form of an *ex parte* motion. Upon the filing of the said petition, the payment of the requisite fees therefor, and the approval of the trial court if such petition is filed during the period for the redemption of the property, the court shall order that a writ of possession be issued.

Sec. 7. Possession during redemption period. – 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 in the registration or cadastral proceedings if the property is registered, or in special proceedings in the case of property registered under the Mortgage Law or under section one hundred and ninety-four of the Administrative Code, or of any other real property encumbered with a mortgage duly registered