

## THIRD DIVISION

[ G.R. No. 137619, February 06, 2001 ]

**REYNALDO L. LAUREANO, PETITIONER, VS. BORMAHECO, INC.  
AND EDGARDO C. CRUZ, RESPONDENTS.**

### D E C I S I O N

**GONZAGA-REYES, J.:**

This is a Petition for Review on Certiorari under Rule 45 seeking to set aside the decision<sup>[1]</sup> of the Court of Appeals<sup>[2]</sup> which dismissed the Petition for Certiorari in CA-G.R. SP No. 45908.

The antecedents of this case are as follows:<sup>[3]</sup>

On December 11, 1962, the spouses Reynaldo Laureano and Florencia Laureano obtained various credit accommodations from the Philippine National Cooperative Bank (PNCB, for brevity), and, as a security therefor, constituted a real estate mortgage upon two (2) lots located at Bel-Air, Makati City, with Transfer Certificate of Title Nos. 59664 and 59665. The Laureano spouses failed to pay their indebtedness. Consequently, PNCB filed a verified application for extra-judicial foreclosure of the real estate mortgage with the Office of the Sheriff of the Regional Trial Court of Makati. On February 20, 1984, a public auction sale was conducted by the Sheriff, and the two lots were purchased by the PNCB as the highest bidder. On the same day, a Certificate of Sale was issued in favor of the bank and registered with the Register of Deeds of Makati City.

The Laureano spouses failed to redeem the two lots within the one-year period. On March 20, 1985, ownership was consolidated in the name of the PNCB, and new titles with TCT Nos. 136823 and 136824 were issued.

On September 26, 1988, PNCB sold several properties including the two lots to Bormaheco, Inc. (Bormaheco, for brevity). Immediately thereafter, new titles with TCT Nos. 157724 and 157725 were issued in favor of Bormaheco.

On October 20, 1988, Bormaheco filed with the Regional Trial Court of Makati<sup>[4]</sup> an *Ex parte* Petition for the Issuance of Writ of Possession (hereafter *ex parte* petition) for the two lots, docketed as LRC Case No. M-1530. The RTC of Makati ordered the service of a copy of the *ex parte* petition upon the Laureano spouses. Reynaldo Laureano filed a Motion to Dismiss the *ex parte* petition on the ground of lack of jurisdiction of the RTC of Makati over the subject matter of the case. The RTC of Makati denied the Motion to Dismiss, and this was challenged by Reynaldo Laureano in a Petition for Certiorari filed with the Court of Appeals (CA-G.R. SP No. 16284). The Court of Appeals dismissed the petition, and denied the corresponding Motion for Reconsideration. The decision of the Court of Appeals was further challenged by Laureano in a Petition for Review filed with the Supreme Court (G.R. No. 87813),

but the High Court sustained the said decision and denied the petition in a Resolution dated November 23, 1989. The petitioner's Motion for Reconsideration was denied with finality on January 22, 1990.

On January 18, 1989, LIDECO Corporation filed a Motion for Intervention and to Admit Attached Complaint in Intervention in LRC Case No. M-1530, alleging that it is the owner and possessor of two buildings constructed on the two lots subject of the *ex parte* petition for the issuance of writ of possession. The complaint for intervention was initially admitted by the RTC, but was stricken off upon motion by Bormaheco alleging that LIDECO Corporation was not a duly registered corporation, and hence had no legal personality. Laureano Investment and Development Corporation, the majority of the stock of which is held by the Laureano spouses, filed an Urgent Motion to Substitute Party Intervenor (LIDECO Corporation) and to Adopt Complaint in Intervention and All Pleadings, but this was denied by the RTC. Laureano Investment and Development Corporation assailed the two RTC Orders<sup>[5]</sup> in a Petition for Certiorari filed with the Court of Appeals (C.A. G.R. No. 22763). The Court of Appeals dismissed the petition, and such dismissal was questioned by Laureano Investment and Development Corporation in the Petition for Review filed with the Supreme Court (G.R. No. 100468).

In the meantime, on October 24, 1991, the RTC of Makati, Branch 141, issued an order granting the *ex parte* petition for the issuance of a writ of possession. On 8 November 1991, Bormaheco, Inc. filed a motion for execution of the RTC Order. Three days later, Reynaldo Laureano filed an Urgent Motion to Dismiss Petition and To Strike Pleadings Filed by Bormaheco on the ground of lack of legal capacity of Bormaheco, Inc. to file the *ex parte* petition. The resolution of these motions was held in abeyance by the RTC in deference to the case pending with the Supreme Court (G.R. No. 100468). On May 6, 1997, the Supreme Court denied the Petition for Review in G.R. 100468.

On September 25, 1997, the RTC of Makati<sup>[6]</sup> issued the contested Order directing the issuance of a Writ of Execution/Possession in favor of Bormaheco, Inc. Reynaldo Laureano filed a Motion for Reconsideration which was denied by the RTC in the contested Order dated November 4, 1997.

On November 10, 1997, Reynaldo Laureano filed a Petition for Certiorari with the Court of Appeals to annul the two RTC Orders (dated September 25, 1997 and November 4, 1997).<sup>[7]</sup> The Petition was dismissed by the Court of Appeals in a Decision promulgated on June 18, 1998. The Motion for Reconsideration filed by Laureano was denied on February 18, 1999. Hence this petition.

The issues, as set forth by the petitioner in his Memorandum, are as follows:<sup>[8]</sup>

#### I.

Did not the Court of Appeals err as a matter of law when it affirmed the trial court's Order of September 25, 1997 and Order of November 4, 1997, and failed to hold as violative of due process the issuance by the trial court of the Order of September 25, 1997 (which finally approved and granted Bormaheco, Inc.'s Petition for the Issuance of Writ of Possession, etc.) when petitioner's "Urgent Motion To Dismiss Petition and To Strike Pleadings Filed by Bormaheco, Inc." was still pending and

unresolved?

## II.

Did not the Court of Appeals err as a matter of law when it did not hold that the trial court had denied petitioner his right to a hearing?

We rule on both issues in the negative. The appellate court committed no error in dismissing the Petition for Certiorari in CA-G.R. SP No. 45908, and in affirming the questioned orders of the trial court.

After a careful examination of the records of the proceedings of this case, we fail to see any violation of due process by the regional trial court. A second look at the antecedents is in order.

The Philippine National Cooperative Bank foreclosed the real estate mortgage executed by the Laureano spouses on the two lots. For failure of the said spouses to redeem the properties during the one-year period, ownership of the lots was consolidated in the name of the PNCB, the purchaser in the foreclosure sale. New titles with TCT Nos. 136823 and 136824 were issued under PNCB's name.

As the purchaser of the properties in the extra-judicial foreclosure sale, the PNCB is entitled to a writ of possession therefor. The law on extra-judicial foreclosure of mortgage<sup>[9]</sup> provides that a purchaser in an extra-judicial foreclosure sale may take possession of the foreclosed property even before the expiration of the redemption period, provided he furnishes the necessary bond. Possession of the property may be obtained by filing an *ex parte* motion with the regional trial court of the province or place where the property or part thereof is situated.<sup>[10]</sup> Upon filing of the motion and the required bond, it becomes a ministerial duty of the court to order the issuance of a writ of possession in favor of the purchaser.<sup>[11]</sup> After the expiration of the one-year period without redemption being effected by the property owner, the right of the purchaser to the possession of the foreclosed property becomes absolute. The basis of this right to possession is the purchaser's ownership of the property.<sup>[12]</sup> Mere filing of an *ex parte* motion for the issuance of the writ of possession would suffice,<sup>[13]</sup> and no bond is required.<sup>[14]</sup>

Instead of seeking the issuance of a writ of possession, however, PNCB sold the two lots to private respondent Bormaheco, Inc. By virtue of the sale, Bormaheco became the new owner of the lots, entitled to all rights and interests its predecessor PNCB had therein, including the right to a writ of possession.

On October 20, 1988, Bormaheco, Inc. filed an *Ex-parte* Petition for the Issuance of a Writ of Possession. By the nature of the petition<sup>[15]</sup>, no notice needed to be served upon persons interested in the subject property. Hence, there was no necessity of giving notice to the Laureano spouses, especially since they already lost all their interests in the properties when they failed to redeem the same. Nonetheless, the RTC of Makati ordered the service of a copy of the petition upon the Laureano spouses.<sup>[16]</sup> Reynaldo Laureano, as an oppositor, even moved to dismiss the *ex parte* petition on the ground of lack of jurisdiction of the court over the subject matter of the case. The RTC denied the Motion to Dismiss, so Laureano