

## **[ CA-G.R. SP No. 131936, March 19, 2014 ]**

### **PHILIPPINE SAVING BANK, PETITIONER, VS. SPOUSES MELODY AND JOHN LANSANG AND THE HON. PRESIDING JUDGE OF BRANCH 7, REGIONAL TRIAL COURT, MALOLOS CITY, RESPONDENTS.**

#### **D E C I S I O N**

##### **CASTILLO, M., J.:**

This is a petition for certiorari seeking to annul and set aside the Orders dated 02 December 2011<sup>[1]</sup> and 03 July 2013,<sup>[2]</sup> of the public respondent Regional Trial Court of Malolos City, Branch 7, in LRC Case No. P-387-M-2010, granting private respondents' motion to quash writ of possession and denying petitioner's motion for reconsideration, respectively.

The antecedents of this petition are:

An Ex-Parte Petition for Writ of Possession was filed by petitioner Philippine Savings Bank (PSBank) on 02 August 2010 before the public respondent RTC.<sup>[3]</sup> The said petition alleged:<sup>[4]</sup>

1. Petitioner is a thrift bank, organized and existing under Philippine laws, with principal office and place of business at 4th Floor, PS Bank Center, 777 Seden St., Paseo de Roxas Avenue, Makati City.
2. On December 11, 2008, Sps. Carlota and Rufino Tolentino with given address at No. 0796, NIA Road, San Juan, Balagtas (Bigaa), Bulacan, applied and obtained loans from petitioner in whose favor he/she/they executed a Promissory Note/s with Real Estate Mortgage xxx payable in accordance with the terms and conditions thereof;
3. To secure payment on the said Promissory Note/s with Real Estate Mortgage, mortgagors mortgaged the said property/ies, covered by Transfer Certificate of Title No. T-274705 duly registered with the Register of Deeds of the Province of Bulacan xxx to herein petitioner;
4. Sps. Carlota and Rufino Tolentino failed to pay the aforesaid loan pursuant to the terms of the Promissory Note/s with Real Estate Mortgage, and notwithstanding demands for payment, he/she/they failed and refused to pay the petitioner of (sic) the aforesaid loan, which became past due;
5. As a consequence of their failure and willful refusal to pay the past due loan, the petitioner instituted extrajudicial foreclosure proceedings against the above-mentioned Real Estate Mortgage, which was executed to secure the payment thereof, and caused the sale at public auction, pursuant to Act No. 3135, as amended, the aforesaid mortgaged property/ies which was/were sold

to the petitioner, as the highest bidder, and the corresponding Certificate of Sale xxx was issued in its favor;

6. Copies of Notice of Extra Judicial Sale, Affidavit of Publication and Minutes of Sale are attached hereto xxx to prove compliance with the procedural requirements of Act No. 3135 and other pertinent laws;
7. Formal Demand xxx was made upon Sps. Francisco and Aurenida Secretario and to all those claiming rights under him/her/them to vacate and turn over actual possession of the foreclosed property to the petitioner but he/she/they failed and/or refused to comply with the said demand;
8. Petitioner is willing to post a bond in an amount equivalent to the reasonable rentals for the use of the foreclosed property for a period of twelve (12) months as the redemption period has not yet expired;
9. The petitioner, as purchaser of the foreclosed property at its auction sale, is authorized to apply *ex-parte* for the issuance of a writ of possession over such property, in accordance with Section 7 of Act 3135 xxx

XXXX XXXX XXXX XXXX

10. In accordance with prevailing jurisprudence, the Honorable Court has the power and authority to grant the petition for a writ of possession applied for and issue the corresponding writ of possession, provided the purchaser of the foreclosed property files the required bond equivalent to the reasonable rentals of the property within the redemption period of one (1) year xxx

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Finding that the petitioner was able to establish its allegations through the evidence it presented *ex-parte*, the RTC granted PSBank's petition on 28 February 2011.<sup>[5]</sup>

On 30 June 2011, private respondent spouses Melody and John Lansang moved to quash the writ of possession issued in favor of PSBank.<sup>[6]</sup> They claimed that they were the real, genuine registered owners of the parcel of land subject of the writ of possession; and that the spouses Carlota and Rufino Tolentino obtained title to the said realty by virtue of a spurious Deed of Absolute Sale dated 30 September 2008. They further averred that they were in actual possession of the said lot and that they had been occupying the same since 2000.

In its first assailed Order, the public respondent ordered the quashal of the writ of possession it earlier issued.

The subsequent motion for reconsideration of PSBank was denied by the RTC in its second assailed Order.

Hence, this petition.

Upon the filing of private respondents' Comment on the petition for certiorari and the lapse of the period granted to the petitioner to file its reply thereto, PSBank was deemed to have waived the filing thereof and the case was submitted for decision sans said reply.

Petitioner imputes grave abuse of discretion on the part of the public respondent RTC in issuing its assailed Orders. It essentially argues that the private respondent spouses Melody and John Lansang are not the third parties in actual possession of the subject property adverse to the mortgagors contemplated by the law exempting the issuance of a writ of possession as a ministerial duty of the court.

We dismiss the instant petition.

An appeal by way of a notice of appeal to this Court is the proper remedy to obtain a reversal of a final order rendered by the Regional Trial Court in the exercise of its original jurisdiction. This holds true even if the error ascribed to the court rendering the judgment is its lack of jurisdiction over the subject matter, or the exercise of power in excess thereof, or grave abuse of discretion in the findings of fact or of law set out in the decision, order or resolution. The existence and availability of the right of appeal prohibits the resort to certiorari because one of the requirements for the latter remedy is that there should be no appeal.<sup>[7]</sup> Thus, in *Balayan v. Acorda*,<sup>[8]</sup> it was clarified:

It bears emphasis that the special civil action for certiorari is a limited form of review and is a remedy of last recourse. The Court has often reminded members of the bench and bar that this extraordinary action lies only where there is no appeal nor plain, speedy and adequate remedy in the ordinary course of law. It cannot be allowed when a party to a case fails to appeal a judgment despite the availability of that remedy, certiorari not being a substitute for a lapsed or lost appeal. Where an appeal is available, certiorari will not prosper, even if the ground therefor is grave abuse of discretion. x x x. (citations omitted.)

Here, the assailed Order of the public respondent (granting private respondents' motion to quash writ of possession) is a final order, given that the same disposed of the Ex-Parte Petition for Writ of Possession of PSBank in a manner that left nothing more to be done by the RTC in respect of the said case.

Accordingly, petitioner should have filed a notice of appeal and not a petition for certiorari before this Court. The failure of PSBank to avail of the appropriate remedy warrants the dismissal of the instant petition. Where the rules prescribe a particular remedy for the vindication of rights, such remedy should be availed of.<sup>[9]</sup>

Moreover, certiorari is not and cannot be made a substitute for an appeal where the latter remedy is available but was lost through fault or negligence.<sup>[10]</sup> In this case, petitioner received the 03 July 2013 Order of the RTC (denying its motion for reconsideration) on 29 July 2013. It therefore had until 13 August 2013 to file a notice of appeal to this Court. PSBank, for unknown reasons, let this period lapse without filing its appeal. It filed the instant petition instead, on 26 September 2013, and attempted to mislead this Court into believing that the filing of the petition for certiorari was proper by declaring therein that "[t]here is no other plain, speedy and adequate remedy in the ordinary course of law."<sup>[11]</sup>

Even on the merits, the instant petition must fail.

The public respondent RTC cannot be faulted for quashing the writ of possession it earlier issued in favor of PSBank. In so doing, the RTC acted well in accordance with the applicable jurisprudence on the matter at hand.

In *Emmanuel C. Villanueva v. Cherdan Lending Investors Corporation*,<sup>[12]</sup> the case cited by the RTC in support of its assailed Order (first), the trial court set aside the writ of possession it issued to respondent therein on motion of petitioner Villanueva. Petitioner averred that he was in actual possession of and the true owner of the parcel of land subject matter of the case and that he was divested of his title thereto through the fraudulent deed of donation executed in favor of the debtors-mortgagors. In sustaining the aforementioned Order of the RTC, the Supreme Court held:

A writ of possession is an order of the court commanding the sheriff to place a person in possession of a real or personal property. It may be issued in an extrajudicial foreclosure of a real estate mortgage under Section 7 of Act 3135, as amended by Act 4118, either 1) within the one-year redemption period, upon the filing of a bond, or 2) after the lapse of the redemption period, without need of a bond or of a separate and independent action.

It is settled that the buyer in a foreclosure sale becomes the absolute owner of the property purchased if it is not redeemed within one year after the registration of the sale. As such, he is entitled to the possession of the property and can demand that he be placed in possession at any time following the consolidation of ownership in his name and the issuance to him of a new TCT. Time and again, we have held that it is ministerial upon the court to issue a writ of possession after the foreclosure sale and during the period of redemption. Upon the filing of an ex parte motion and the approval of the corresponding bond, the court issues the order for a writ of possession. The writ of possession issues as a matter of course even without the filing and approval of a bond after consolidation of ownership and the issuance of a new TCT in the name of the purchaser.

This rule, however, is not without exception. Under Section 33, Rule 39 of the Rules of Court, which is made to apply suppletorily to the extrajudicial foreclosure of real estate mortgages by Section 6, Act 3135, as amended, the possession of the mortgaged property may be awarded to a purchaser in the extrajudicial foreclosure unless a third party is actually holding the property adversely to the judgment debtor. Section 33 provides:

*Sec. 33. Deed and possession to be given at expiration of redemption period; by whom executed or given.*

If no redemption be made within one (1) year from the date of the registration of the certificate of sale, the purchaser is entitled to a conveyance and possession of the property; or, if so redeemed whenever sixty (60) days have elapsed and no other redemption has been made, and notice thereof given, and the time for redemption has expired, the last