

FOURTH DIVISION

[CA-G.R. CV NO. 99357, July 14, 2014]

**PHILIPPINE SAVINGS BANK, PETITIONER-APPELLEE, VS.
GREGORIA B. LAZATIN, ELISA P. BAGTAS AND EMILYN B.
FRANCISCO, INTERVENORS-APPELLANTS.**

D E C I S I O N

GONZALES-SISON, M., J.:

This is an appeal interposed by intervenors-appellants Gregoria B. Lazatin, Elisa P. Bagtas and Emilyn B. Francisco assailing the Orders of the Regional Trial Court, Quezon City, Branch 224, dated 22 September 2011 and 2 April 2012 in LRC Case No. Q-26960(09).

Subject of this suit is a parcel of land identified as Lot 8, Block 23, containing an area of Seven Hundred (700) square meters, more or less, located at Everlasting Street, Maligaya Park, Pasong Putik, Novaliches, Quezon City, covered by Transfer Certificate of Title No. N-284901^[1] of the Registry of Deeds of Quezon City and registered in the name of Annaliza M. Santiago.

Records show that on June 3, 2006, Annaliza M. Santiago, represented by her Attorney-in-Fact Miguel M. Santiago, obtained a loan from petitioner-appellee Philippine Savings Bank in the amount of One Million Five Hundred Thousand Pesos (Php1,500,000.00). As security for said loan, she executed a real estate mortgage^[2] over the aforesaid land, with all the buildings and improvements existing thereon. The loan was further secured by the joint and several signatures of Marina M. Santiago, Miguel M. Santiago and Rosa A. Santiago who signed as co-borrowers in a Promissory Note^[3] dated June 6, 2006 since the purpose of the loan is for "Additional working capital."

Eventually Annaliza M. Santiago and her co-borrowers failed to pay their outstanding obligation despite demand.^[4] Thus, on December 14, 2007, PS Bank filed an Application for Extra-Judicial Foreclosure of Real Estate Mortgage pursuant to Act No. 3135,^[5] as amended, before the Office of the Clerk of Court and Ex-Officio Sheriff of the Regional Trial Court (RTC) of Quezon City. In its application, PS Bank requested the said office to foreclose the mortgage extrajudicially in the manner and form prescribed by Act No. 3135, as amended, to satisfy the debt of P1,419,515.18, excluding penalty charges and attorney's fees, as of December 10, 2007.

Acting on the application, the Office of the Clerk of Court and Ex-Officio Sheriff issued a Notice of Extra-Judicial Sale of Real Property^[6] dated January 14, 2008, setting the foreclosure sale on February 28, 2008.

During the auction sale conducted on February 21, 2008, PS Bank emerged as the sole and highest bidder.^[7] A corresponding Certificate of Sale^[8] dated March 11, 2008 was issued in favor of PS Bank, which was registered with the Registry of Deeds of Quezon City on April 3, 2008.

During the period of redemption, on March 17, 2009, PS Bank filed an Ex-Parte Petition for Writ of Possession^[9] with the Regional Trial Court (RTC) of Quezon City docketed as LRC Case No. Q-26960(09). Petitioner's counsel had completed the presentation of all the requirements to establish jurisdiction on August 26, 2009, and in view of the absence of any written or oral opposition to the said Petition, the *ex-parte* presentation of evidence before the Branch Clerk of Court was set on September 11, 2009 at 10:00 o'clock in the morning. However, petitioner as well as its counsel failed to appear on the said date of *ex-parte* hearing. Thus, the RTC was constrained to dismiss the petition for lack of interest in an Order dated December 22, 2009.

Petitioner on February 2, 2010 filed a Motion for Reconsideration of the Order dated December 22, 2009, which was granted in an Order dated February 24, 2010. The *ex-parte* presentation of petitioner's evidence before the Branch Clerk of Court was set anew on March 25, 2010 at 2:00 o'clock in the afternoon. After the *ex-parte* presentation of petitioner's evidence before the Branch Clerk of Court, the RTC rendered its Decision dated September 17, 2010, the dispositive portion of which reads:

*"Accordingly, therefore, the instant 'In Re:Petition for Issuance of a Writ of Possession Under Section 7 of Act No. 3135, as Amended, Over Property/ies Covered by Transfer Certificate of Title No. N-284901 of the Registry of Deeds of Quezon City in the Name of Annaliza Santiago' is hereby **GRANTED**. As prayed for, let a Writ of Possession be issued in favor of the petitioner, Philippine Savings Bank, over the subject property now covered by Transfer Certificate of Title No. N-338045 of the Registry of Deeds for Quezon City.*

SO ORDERED."

By virtue of the September 17, 2010 decision, the Branch Clerk of Court issued a Writ of Possession commanding the Deputy Sheriff, Office of the Clerk of Court, Regional Trial Court, Quezon City, to place petitioner Philippines Savings Bank in possession of the subject property and to eject therefrom any person who may be found in possession of the premises, subject matter of the petition.

On February 17, 2011, intervenors-appellants Gregoria B. Lazatin, Eliza P. Bagtas and Emilyn B. Francisco filed a "Motion For leave of Court To File Intervention and/or Petition for Relief from Judgment" attaching therein their "Complaint in Intervention with Petition for Relief from Judgment and prayer for provisional remedy. They sought the following relief: 1) an Order be issued directing the sheriff to temporarily cease and desist, hold in abeyance the implementation/execution of the writ of possession dated October 21, 2010 against the intervenors-appellants; 2) after due course in favor of intervenors-appellants, to declare the injunction permanent and perpetual in favor of intervenors-appellants; and 3) intervenors-appellants' claim for damages and refund for attorney's fees be given due course.

Intervenors-appellants alleged the following causes of action: a) they have been occupying the premises in question since 1986 or twenty-three (23) years now; they entered it upon consent of the former occupant and permission of the barangay; b) they later learned that the premises is friar land, owned by the government, and the Director of Lands had already nullified titles of the realtor covering among others the lot they occupy; c) they discovered recently that Annaliza Santiago mortgaged the lot, including their houses, without their knowledge or consent, to the Philippines Savings Bank, who foreclosed the mortgage and elicited a new title; d) they did not receive any notice, demand or summons in this proceedings; and e) that there was fraud in the processes of the mortgage, its foreclosure, the pursuance of its plea for possession, since Annaliza Santiago included in the mortgage the houses she does not own, and the mortgagee bank recklessly accepted, without simple investigation, and later foreclosed the mortgage, binding therein the houses of intervenors-appellants.

PS Bank opposed^[10] the motion on the following grounds, to wit: 1) intervenors availed of a wrong remedy and that the motion was filed out of time; 2) the petition for relief does not comply with the requirements of Section 1, Rule 38 of the Rules of Court as there was no allegation that the intervenors were prevented by fraud, accident, mistake or excusable negligence from taking an appeal of the judgment rendered by the trial court; 3) intervenor Gregoria Lazatin, the one who verified the petition, has no personality to act for and in behalf of the other intervenors as she is not equipped with a Special Power of Attorney; 4) intervenors' attempt to nullify a valid title registered in the name of Annaliza Santiago can only be done in an independent case designed primarily to invalidate a title and not in a land registration case for the issuance of a writ of possession; 5) the petition for relief has no leg to stand on as it does not even pray for the quashal of the writ of possession.

To support its arguments, PS Bank cites Section 7 of Act 3135 which provides:

"In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance (now Regional Trial Court) of the province or place where the property or any part thereof is situated, to give him possession thereof during the redemptive 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 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 in the office of any register of deeds in accordance with any existing law, x x x and the court shall, upon approval of the bond, order that a writ of possession issue, addressed to the sheriff of the province in which the property is situated, who shall execute said order immediately."

PS Bank also referred to *GSIS v. Court of Appeals*^[11] where the Honorable Supreme Court held that "(A)n *ex-parte* proceeding is a judicial proceeding for the benefit of one party only and without notice to or consent by any person adversely interested." Accordingly, those not privy to the *ex-parte* proceeding, like the intervenors-

appellants herein, have no personality to participate much less assail the proceeding.

To further bolster its argument, PS Bank anchors on the ruling in the case of *Spouses Felipe and Flora Yulienco v. Court of Appeals*^[12] where it was held that:

"Well-settled is the rule that after the consolidation of title in the buyer's name, for failure of the mortgagors to redeem, the writ of possession becomes a matter of right. Its issuance to a purchaser in an extrajudicial foreclosure is merely a ministerial function. The writ of possession issues as a matter of course upon the filing of the proper motion and the approval of the corresponding bond. The judge issuing the writ following these express provisions of law neither exercises his official discretion nor judgment."

Furthermore, PS Bank cites *Alarilla v. Parayno*^[13] where the Honorable Supreme Court held:

"Any question regarding the validity of the mortgage or its foreclosure cannot be a legal ground for refusing the issuance of a writ of possession. Regardless of whether or not there is a pending action for the nullification of the sale at public auction, or the foreclosure itself, or even for the nullification of the real estate mortgage executed by the petitioners over the property, the respondent as purchaser at public auction is entitled to a writ of possession without prejudice to the outcome of the action filed by the petitioners with the Regional Trial Court x x x."

On September 22, 2011, the RTC of Quezon City, Branch 224, issued an Order^[14] denying the Motion for Intervention and/or Petition for Relief from Judgment for lack of merit, to wit:

"x x x. Pursuant to Section 1, Rule 19 of the Rules of Court, the Supreme Court has held that a motion for intervention shall be entertained when the following requisites are satisfied: (1) the would-be intervenor shows that he has a substantial right or interest in the case; and (2) such right or interest cannot be adequately pursued and protected in another proceeding. (Quinto vs. Commission on Elections, G.R. No. 189698, February 22, 2010).

Moreover, Section 2, Rule 19 of the Rules of Court provides the time within which a motion for intervention may be filed: 'Time to intervene. - The motion for intervention may be filed at anytime before rendition of judgment by the trial court. A copy of the pleading-in-intervention shall be attached to the motion and served on the original parties.'

In this case, there is no compelling reason to disregard the abovementioned provision considering that judgment had already been rendered in this proceeding by the Court. The movants had failed to show any substantial right or interest in this case and they also had not offered any reason why such right or interest cannot be adequately pursued and protected in another proceeding. Substantially, the allowance or disallowance of a motion for intervention rests on the sound discretion of

the court after consideration of the appropriate circumstances. (Quinto vs. Commission on Elections, Ibid).

Furthermore, the Movants failed to allege or show that the subject Decision of this Court was taken against them through fraud, accident, mistake or excusable negligence as required under Section 1, Rule 38 of the Rules of Court. The claim of the said movants pertaining to their alleged cause of action to justify a Petition for Relief from Judgment is merely their being occupants for 23 years, having entered the premises upon consent of the former occupant and permission of the Barangay. This ground does not appear to be sufficient to deprive the petitioner of ownership or to preclude its exercise of the rights as a lawful owner. At any rate, it must be stressed that the instant case is an ex-parte petition for the issuance of a writ of possession which is not in the nature of a civil action governed by the Rules of Civil Procedure but a judicial proceeding governed separately by Act No. 3135 which regulates the methods of effecting an extrajudicial foreclosure of mortgage. 'The issuance of a writ of possession to a purchaser in an extrajudicial foreclosure is summary and ministerial in nature as such proceeding is merely an incident in the transfer of title. The trial court does not exercise discretion in the issuance thereof; it must grant the issuance of the writ upon compliance with the requirements set forth by law, and the provincial sheriff is likewise mandated to implement the writ immediately.' (*Spouses Topacio vs. Banco Filipino Savings and Mortgage Bank*, G.R. No. 157644, November 17, 2010).

The Movants may not be allowed, as in this case, to collaterally attack the title of the petitioner or its predecessors apparently to prevent the implementation of the Writ of Possession issued by the Court over the subject property. It remains undisputed that a foreclosure sale was conducted and the subject property was sold at public auction with the petitioner as the highest bidder. The Title to the said property had been lawfully transferred to the said petitioner as the new owner thereof pursuant to Act No. 3135. Moreover, the consistent pronouncement of the Supreme Court on the matter is that: 'the right of the purchaser to the possession of the foreclosed property becomes absolute upon the expiration of the redemption period. The basis of this right to possession is the purchaser's ownership of the property. After the consolidation of title in the buyer's name for failure of the mortgagor to redeem, the writ of possession becomes a matter of right and its issuance to a purchaser in an extrajudicial foreclosure is merely a ministerial function. (*Spouses Sarrosa vs. Dizon*, G.R. No. 183027, July 25, 2010)."

Intervenors-appellants filed a motion for reconsideration but the motion was denied in the Order of the trial court dated April 2, 2012.

Hence, this appeal.

Intervenors-appellants raise the following assignment of errors:

I

THE TRIAL COURT GRAVELY ERRED IN DENYING THE MOTION FOR LEAVE OF COURT TO FILE INTERVENTION AND/OR PETITION FOR RELIEF FROM