

THIRTEENTH DIVISION

[CA-G.R. CV NO. 96504, November 21, 2014]

**ROSARIO BUMANGLAG, PETITIONER-APPELLEE, VS. SPOUSES
QUIRICO M. MAJADUCOM AND AURORA S. MAJADUCOM,
RESPONDENTS-APPELLANTS.**

D E C I S I O N

SADANG, J.:

Brought to this court via appeal is the Resolution^[1] dated August 31, 2010 of the Regional Trial Court (RTC) of Muntinlupa City, Branch 276, in LRC Case No. 09-080, granting petitioner-appellee's petition for issuance of writ of possession, and the Order^[2] dated January 10, 2011 denying the motion for reconsideration of the respondents-appellants.

Records show that petitioner-appellee Rosario Bumanglag (hereafter, appellee) filed in the RTC a Petition for the Issuance of a Writ of Possession. At the hearing on February 18, 2010, the RTC granted respondents-appellants spouses Quirico M. Majaducom (Quirico) and Aurora Majaducom (hereafter, appellants) ten days to file a comment or opposition.^[3] Because appellants did not file their comment or opposition, the RTC allowed appellee to present evidence *ex-parte*. At the May 28, 2010 hearing before the court-appointed hearing officer,^[4] appellee testified that to secure a P26,000.00 loan appellants mortgaged to her a parcel of land located in Tunasan, Muntinlupa City, covered by Transfer Certificate of Title (TCT) No. S-92296^[5] in the name of appellants, under a Deed of Real Estate Mortgage (REM)^[6] dated September 29, 1987. In view of appellants' failure to pay the loan, the REM was extrajudicially foreclosed and the land sold in a foreclosure sale conducted by the Clerk of Court and Ex-Officio Sheriff of Muntinlupa City on November 12, 2003. As the highest bidder, appellee was issued a Certificate of Sale^[7] in her name. Appellants did not redeem the property within the one (1) year redemption period and refused to vacate the land.

In an Order, dated August 31, 2010, the RTC granted the issuance of the writ of possession, disposing thus:

WHEREFORE, in the light of the foregoing, the Petition for the Issuance of a Writ of Possession is therefore GRANTED. Let a Writ of Possession issue to place Petitioner Rosario M. Bumanglag in possession of the subject property covered by Transfer Certificate of Title No. S-92296 and the Deputy Sheriff of this Court is hereby directed to implement the same.

SO ORDERED.^[8]

Appellants filed a Motion for Reconsideration but it was denied in the assailed Order^[9] dated January 10, 2011.

Appellants simultaneously filed a Notice of Appeal *Ad Cautelam*^[10] and a Joint Record on Appeal *Ad Cautelam*.^[11] The RTC directed the transmittal of the records in an Order dated February 8, 2011.

In their Respondents-Appellant's Brief, appellants raise the following assignment of errors:^[12]

I. THE LOWER COURT ERRED IN GRANTING EX PARTE AS A MATTER OF COURSE, THE ISSUANCE OF THE WRIT OF POSSESSION.

II. THE LOWER COURT ERRED IN NOT CONSIDERING THAT THE ISSUE OF THE VALIDITY OF THE MORTGAGE CAN BE A LEGAL GROUND FOR THE REFUSAL OF THE ISSUANCE OF THE WRIT OF POSSESSION.

RULING

The appeal must be denied.

Where the redemption period expires without the mortgagor or his successor-in-interest redeeming the foreclosed property within one year from the registration of the sale with the Register of Deeds, the title over the property consolidates in the purchaser. The consolidation confirms the purchaser as the owner entitled to the possession of the property without any need for him to file the bond required under Section 7 of Act No. 3135.^[13] The issuance of a writ of possession to the purchaser becomes a matter of right upon the consolidation of title in his name,^[14] while the mortgagor, by failing to redeem, loses all interest in the property.^[15]

In this case, there is no question that appellee was the highest bidder at the foreclosure sale of the real property covered by TCT No. S-92296. There is also no question that a certificate of sale was issued in her favor and she caused the registration and annotation thereof on TCT No. S-92296 on July 14, 2005. From that date, appellants had a period of one (1) year within which to exercise their right of redemption.^[16] There being no question that appellants did not redeem the property within the prescribed period, title to the land was consolidated in favor of appellee. Her right to possession has ripened into the right of a confirmed absolute owner^[17] and the issuance of the writ becomes a ministerial function that does not admit of the exercise of judicial discretion.^[18] The right of possession of appellee would now be based not only on Section 7 of Act 3135 but also on Article 428 of the Civil Code which provides for said right as an incident of ownership.^[19] The right to possess a property follows ownership.^[20]

Appellants contend that it was erroneous for the trial court to issue the writ of possession despite the question of validity of the REM. The contention deserves