



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

CESAR V. MADRIAGA, JR.,
Petitioner,

G.R. No. 192377

Present:

- versus -

CARPIO, J.,
Chairperson,
DEL CASTILLO,*
PEREZ,
SERENO, and
REYES, JJ.

CHINA BANKING CORPORATION,
Respondent.

Promulgated:

JUL 25 2012 *Howe Cabalaglo*

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DECISION

REYES, J.:

Before us is a petition for review of the Decision¹ dated January 27, 2010 of the Court of Appeals (CA) dismissing the petition for *certiorari* and the Resolution² dated May 26, 2010 denying the motion for reconsideration thereof in CA-G.R. SP No. 96640.

* Additional member per Special Order No. 1257 dated July 19, 2012, in view of the leave of absence of Associate Justice Arturo D. Brion.

¹ Penned by Associate Justice Jose C. Reyes, Jr., with Associate Justices Ricardo R. Rosario and Amy C. Lazaro-Javier, concurring; *rollo*, pp. 37-48.

² *Id.* at 49.

The CA upheld the Order³ dated August 11, 2006 of the Regional Trial Court (RTC), Branch 17 of Malolos, in Civil Case No. P-167-2002 denying herein petitioner Cesar V. Madriaga, Jr.'s (petitioner) motion to quash the *ex parte* writ of possession issued in favor of herein respondent China Banking Corporation (China Bank).

Factual Antecedents

The spouses Rolando and Norma Trajano (Spouses Trajano) were the original registered owners of the properties in dispute – two residential properties located in Ibayo, Marilao, Bulacan, covered by TCT Nos. 114853(M) and 114854(M). Sometime in 1991, they agreed to sell the properties to the petitioner's father, Cesar Madriaga, Sr. (Madriaga, Sr.) for ₱1,300,000.00 payable on installment basis. Upon completion of payment,⁴ Spouses Trajano executed in Madriaga, Sr.'s favor a Deed of Absolute Sale dated September 2, 1992.⁵

Spouses Trajano, however, failed to deliver the lot titles, so Madriaga, Sr. sued for specific performance with the RTC Branch 19 of Malolos City, and docketed as Civil Case No. 521-M-93. The parties later entered into a compromise agreement, which the court approved on June 13, 1994.⁶ It was agreed that Spouses Trajano will take out a loan with Asia Trust Bank secured by a mortgage over the properties, and from the proceeds, settle the ₱1,225,000.00 they owed Madriaga, Sr.. It also appears from the agreement that the titles to the properties were retained by a certain Mariano and Florentino Blanco as security for a loan received by both Spouses Trajano and Madriaga, Sr..⁷ It was also agreed that the notice of *lis pendens* previously caused by Madriaga, Sr. to be annotated on the titles will be cancelled.⁸

³ Under the sala of Presiding Judge Ma. Theresa V. Mendoza-Arcega; id. at 67-71.

⁴ Id. at 86.

⁵ Id. at 84-85.

⁶ Id. at 87-88.

⁷ Id. at 87.

⁸ Id.

Spouses Trajano, however, failed to comply with their obligation under the compromise judgment. On motion of Madriaga, Sr., the RTC issued a writ of execution on September 6, 1994, and several properties of Spouses Trajano were levied upon, including the disputed properties. A notice of levy dated January 18, 1995 was also given to the Register of Deeds.⁹ At the auction held on February 22, 1995, Madriaga, Sr. was declared the winning bidder, and a certificate of sale was issued to him on March 22, 1995. After the lapse of the one-year redemption period, he was issued a final deed of sale; consequently, TCT Nos. 114853(M) and 114854(M) were cancelled and replaced by TCT Nos. T-284713(M) and T-284714 in his name. On January 27, 1997, he secured an *ex parte* writ of possession.¹⁰

Meanwhile, on January 2, 1995, Spouses Trajano obtained a loan from China Bank in the amount of ₱700,000.00, payable in one year and secured by a mortgage over TCT Nos. 114853(M) and 114854(M). They defaulted on their loan, and on October 20, 1997, China Bank foreclosed the mortgage and was declared the highest bidder at the foreclosure sale held on November 24, 1997. After consolidation of its titles, TCT Nos. T-346239(M) and T-346240(M) were issued to China Bank to replace, for the second time, TCT Nos. 114853(M) and 114854(M).¹¹

On April 2, 2002, China Bank filed with the RTC Branch 17 of Malolos, an *ex parte* petition for writ of possession, docketed as Civil Case No. P-167-2002. It impleaded as respondents the “*Sps. Trajano and/or all persons claiming rights under their name.*” The writ was granted on July 12, 2002, and a copy served upon Madriaga, Sr. on August 2, 2002.

⁹ Id. at 114.

¹⁰ Id. at 105-106.

¹¹ Atty. Domingo Paguia, the new Registrar of Deeds of Meycauayan, Bulacan, *vice* Atty. Alfredo Santos, in his testimony in Civil Case No. 406-M-2002, could not explain why two sets of titles were issued to replace TCT Nos. 114853(M) and 114854(M), both during the term of Atty. Santos, although he pointed out that Spouses Trajano’s titles bore no annotations on the sale to Madriaga, Sr., but only the transfer to China Bank. (Id. at 118-119.)

On November 1, 2002, Madriaga, Sr. filed an opposition to the writ wherein he asserted that he was the true owner of the properties, having obtained them at an earlier execution sale, and that his titles were subsisting. The RTC dismissed his opposition and denied his motion for reconsideration.

Undeterred, on April 13, 2005, the petitioner filed a “Motion to Quash/Abate the Writ of Possession,”¹² which was denied by the RTC in its Order¹³ dated February 6, 2006. The RTC ruled that it had no jurisdiction over the parties’ contending claims of ownership which was already pending before RTC Branch 12 of Malolos, docketed as Civil Case No. 406-M-2002 (specific performance case), entitled “*Cesar Madriaga v. China Banking Corporation, Register of Deeds of Meycauayan and Spouses Rolando and Norma Trajano.*” The RTC also noted that the petitioner’s motion had been mooted by the satisfaction of the writ on April 15, 2005, per the Sheriff’s return.¹⁴

On March 6, 2006, the petitioner moved for reconsideration of the Order dated February 6, 2006 in Civil Case No. P-167-2002 (writ of possession case),¹⁵ insisting that he was deprived of due process because he was not served with notice of China Bank’s *ex parte* petition for writ of possession, and that he came to know of its separate titles only when he was served the writ of possession.

Unmoved, the RTC denied his motion for reconsideration in its Order¹⁶ dated August 11, 2006, reasoning that it was merely performing a ministerial duty to issue the writ of possession to China Bank.

¹² Id. at 50-61.

¹³ Id. at 81-83.

¹⁴ Id. at 83.

¹⁵ Id. at 72-80.

¹⁶ Id. at 67-71.

The petitioner, who succeeded to his father's properties then filed a petition for *certiorari* to the CA averring that the RTC gravely and seriously abused its discretion in denying the motion to abate/quash the writ of possession; in considering the issuance of the writ as ministerial; and in not declaring China Bank in bad faith, hence, not entitled to possession of the properties.¹⁷

In the Decision dated January 27, 2010, the CA ruled that the RTC did not commit grave abuse of discretion in denying Madriaga, Sr.'s motion to quash or abate the *ex parte* writ of possession for the reason that the motion had already been rendered moot and academic after the writ was satisfied on April 15, 2005 with the physical removal of Madriaga, Sr. from the premises. On May 26, 2010, the CA denied the petitioner's motion for reconsideration.¹⁸

Hence, the present petition.

The petitioner avers that the writ of possession was directed, not against his father, but against Spouses Trajano and "all persons claiming rights under them." He insists that his father derived his titles not through a voluntary transaction with Spouses Trajano, but by purchase in an execution sale. He also maintains that China Bank's titles are void because they came from a void mortgage.

The petitioner also asserts that the RTC gravely erred in not finding that China Bank failed to investigate the titles of Spouses Trajano before approving their loan, in view of the *lis pendens* annotation thereon. The petitioner adverts to the decision of the RTC in Civil Case No. 406-M-2002 (specific performance case)¹⁹ charging China Bank with notice of a serious flaw in Spouses Trajano's titles, whereas the petitioner's titles came from an

¹⁷ Id. at 41.

¹⁸ Id. at 49.

¹⁹ Id. at 112-130.

earlier execution sale, and he and his father had been in open, uninterrupted and adverse possession since 1991.

The petitioner also insists that an *ex parte* writ of possession can be attacked either directly or collaterally for being null and void *ab initio* due to lack of due process, notwithstanding that in the meantime it has even been satisfied.

The petitioner, thus, maintains that his restoration to possession must be ordered because his eviction by a mere *ex parte* writ of possession violated his right to due process, since his father was unable to participate in the said proceedings due to lack of notice.

Our Ruling

We deny the petition.

The case has been rendered moot and academic by the full implementation/satisfaction of the writ of possession.

The trial court in its Order dated February 6, 2006 took note of the Sheriff's return stating that the writ of possession it issued to China Bank had been satisfied on April 15, 2005 after the petitioner had been successfully removed from the subject premises, prompting the court to declare that the petitioner's Motion to Quash/Abate the Writ of Possession has been rendered moot and academic.

Indeed, with the writ of possession having been served and satisfied, the said motions had ceased to present a justiciable controversy, and a declaration thereon would be of no practical use or value.²⁰

²⁰ See *Sps. de Vera v. Hon. Agloro*, 489 Phil. 185 (2005).

Judicial power presupposes actual controversies, the very antithesis of mootness. Where there is no more live subject of controversy, the Court ceases to have a reason to render any ruling or make any pronouncement.²¹ Courts generally decline jurisdiction on the ground of mootness – save when, among others, a compelling constitutional issue raised requires the formulation of controlling principles to guide the bench, the bar and the public; or when the case is capable of repetition yet evading judicial review,²² which are not extant in this case.

The issuance of the *ex parte* writ of possession did not violate Madriaga, Sr.'s right to due process.

Section 7 of Act 3135 expressly allows the buyer at the auction to file a verified petition in the form of an *ex parte* motion for issuance of a writ of possession. This connotes that it is for the benefit of one party, without notice to or challenge by an adverse party. Being summary in nature, it cannot be said to be a judgment on the merits, but is simply an incident in the transfer of title.²³ As pointed out in *Philippine National Bank v. Court of Appeals*,²⁴ an *ex parte* petition for writ of possession under Act 3135 is, strictly speaking, not a judicial, or litigious, proceeding, for the reason that an extrajudicial foreclosure of mortgage is accomplished by filing a petition, not with any court of justice, but with the office of the sheriff of the place where the sale is to be made.

Indeed, 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 adversely

²¹ *Suplico v. National Economic and Development Authority*, G.R. No. 178830, July 14, 2008, 558 SCRA 329, 354.

²² *Osmeña III v. Social Security System of the Philippines*, G.R. No. 165272, September 13, 2007, 533 SCRA 313, 327.

²³ *Sps. Ong v. Court of Appeals*, 388 Phil. 857, 867 (2000).

²⁴ 424 Phil. 757 (2002).

interested. It is a proceeding wherein relief is granted without affording the person against whom the relief is sought the opportunity to be heard.²⁵ No notice is needed to be served upon persons interested in the subject property.²⁶ And as held in *Carlos v. Court of Appeals*,²⁷ the *ex parte* nature of the proceeding does not deny due process to the petitioners because the issuance of the writ of possession does not bar a separate case for annulment of mortgage and foreclosure sale. Hence, the RTC may grant the petition even in the absence of Madriaga, Sr.'s participation.

Moreover, records show that Madriaga, Sr. was able to air his side when he filed: on November 1, 2002 an opposition to the writ; on April 13, 2005, a "Motion to Quash/Abate the Writ of Possession"; and on March 6, 2006, a motion for reconsideration of the Order dated February 6, 2006 denying his motion to quash/abate the writ of possession. When a party has been afforded opportunity to present his side, he cannot feign denial of due process.²⁸

The petitioner's predecessor is not a third-party whose possession of the disputed properties is adverse to that of Spouses Trajano.

A writ of possession of real property may be issued in cases of extrajudicial foreclosure of a real estate mortgage under Section 7 of Act 3135, as amended by Act 4118.²⁹ Sec. 7 provides:

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

²⁵ *Fernandez v. Espinoza*, G.R. No. 156421, April 14, 2008, 551 SCRA 136, 150.

²⁶ *Sagarbarria v. Philippine Business Bank*, G.R. No. 178330, July 23, 2009, 593 SCRA 645, 653.

²⁷ G.R. No. 164036, October 19, 2007, 537 SCRA 247.

²⁸ *Dayrit v. Phil. Bank of Communications*, 435 Phil. 120, 126 (2002).

²⁹ *Idolor v. Court of Appeals*, 490 Phil. 808, 812 (2005), citing *Chailease Finance, Corp. v. Spouses Ma*, 456 Phil. 498, 502 (2003) and *Sps. Ong v. Court of Appeals*, *supra* note 23.

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 Sec. 194 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, and in each case the clerk of court shall, upon the filing of such petition, collect the fees specified in par. 11 of Sec. 114 of Act No. 496, 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.

The right of the owner to the possession of a property is an essential attribute of ownership.³⁰ In extrajudicial foreclosures, the purchaser becomes the absolute owner when no redemption is made. Thus, after consolidation of ownership and issuance of a new transfer certificate of title in the name of the purchaser, he is entitled to possession of the property³¹ as a matter of right under Section 7, and its issuance by the RTC is a mere ministerial function.³²

The rule, however, admits of an exception. Thus, it is specifically provided in Section 33, Rule 39 of the Rules of Court³³ that the possession of the extrajudicially foreclosed property shall be withheld from the purchaser if a third-party is actually holding the same adversely to the mortgagor/debtor.³⁴

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

*x x x The possession of the property shall be given to the purchaser or last redemptioner by the same officer **unless a third party is actually holding the property adversely to the judgment obligor.**”*

³⁰ CIVIL CODE OF THE PHILIPPINES, Articles 428-430.

³¹ *Samson v. Rivera*, G.R. No. 154355, May 20, 2004, 428 SCRA 759.

³² *Metropolitan Bank & Trust Company v. Santos*, G.R. No. 157867, December 15, 2009, 608 SCRA 222, 234, citing *Sps. Yulienco v. Court of Appeals*, 441 Phil. 397 (2002); *A.G. Development Corp. v. CA*, 346 Phil. 136 (1997); *Navarra v. Court of Appeals*, G.R. No. 86237, December 17, 1991, 204 SCRA 850.

³³ *IFC Service Leasing and Acceptance Corp. v. Nera*, G.R. No. L-21720, January 30, 1967, 125 Phil. 595, 598 (1967).

³⁴ *China Banking Corporation v. Lozada*, G.R. No. 164919, July 4, 2008, 557 SCRA 177, 202.

In an extrajudicial foreclosure of real property, when the foreclosed property is in the possession of a third-party holding the same adversely to the defaulting debtor/mortgagor, the issuance by the RTC of a writ of possession in favor of the purchaser of the said real property ceases to be ministerial and may no longer be done *ex parte*. **For the exception to apply, however, the property need not only be possessed by a third-party, but also held by the third-party adversely to the debtor/mortgagor.**³⁵

In *BPI Family Savings Bank, Inc. v. Golden Power Diesel Sales Center, Inc.*,³⁶ the Court discussed the meaning of a “third-party who is actually holding the property adversely to the judgment obligor” –

“The exception provided under Section 33 of Rule 39 of the Revised Rules of Court contemplates a situation in which a third party holds the property by adverse title or right, such as that of a co-owner, tenant or usufructuary. The co-owner, agricultural tenant, and usufructuary possess the property in their own right, and they are not merely the successor or transferee of the right of possession of another co-owner or the owner of the property.”³⁷

It is not disputed that Madriaga, Sr. was in actual possession of the disputed properties at the time the writ of possession was issued by the RTC. China Bank, on the other hand, has in its favor TCT Nos. T-346239(M) and T-346240(M) issued pursuant to the extrajudicial foreclosure sale. The RTC, at that juncture, had no alternative but to issue the writ of possession. As it stated in its Order dated February 6, 2006,” x x x [a]t the time it rendered its Decision on July 12, [2002] (granting the *ex parte* petition for the issuance of the writ of possession), the evidence obtaining herein overwhelmingly warranted the issuance of the possessory writ in favor of petitioner Bank.”³⁸

Moreover, it must be emphasized that Madriaga, Sr.’s possession was by virtue of the 1991 agreement between him and Spouses Trajano for the

³⁵ Id. at 198.

³⁶ G.R. No. 176019, January 12, 2011, 639 SCRA 405.

³⁷ Id. at 417-418, citing *China Banking Corporation v. Lozada*, supra note 34.

³⁸ *Rollo*, pp. 82-83.

sale of the properties. As it turned out, Spouses Trajano reneged on their original contractual undertaking to deliver the titles thereby prompting the petitioner to pursue his claim over the disputed properties. The writ of execution and execution sale referred to by the petitioner as basis of their alleged adverse possession was issued by the RTC, as a matter of course in Civil Case No. 521-M-93, which was the initial civil case filed by them to compel Spouses Trajano to deliver the title to the properties pursuant to the sale. The filing of Civil Case No. 521-M-93, the compromise agreement subsequently entered into by the parties, and the judgment and orders issued by the RTC in said case, in fact, confirmed the existence of the previous transaction between Madriaga, Sr. and Spouses Trajano, *i.e.*, the transfer of the disputed properties to Madriaga, Sr. by way of sale. Evidently, Madriaga, Sr.'s interest from the properties sprung from his supposed right as the successor or transferee of Spouses Trajano. It cannot be gainsaid, therefore, that their claim of possession was acquired from Spouses Trajano, which cannot be considered adverse or contrary, and the RTC had all the authority to issue the *ex parte* writ of possession.

In any event, as we have previously noted, the petitioner has already pursued Civil Case No. 406-M-2002 for "Specific Performance, Nullification of Title, Reconveyance and Damages," a plenary action to recover possession or an *acción reivindicatoria*."³⁹ It is in said forum that the contending ownership claims of the parties, and resultantly the right of possession, can be best ventilated and resolved with definiteness.

WHEREFORE, the petition for review is **DENIED** for lack of merit.

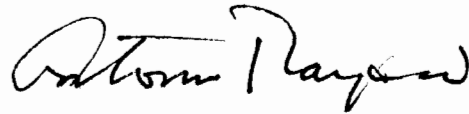
SO ORDERED.


BIENVENIDO L. REYES
Associate Justice

³⁹

Id. at 112-130.

WE CONCUR:




ANTONIO T. CARPIO
Senior Associate Justice
Chairperson, Second Division



MARIANO C. DEL CASTILLO
Associate Justice



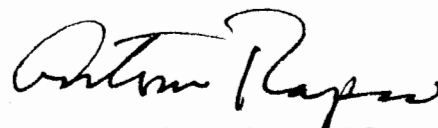
JOSE PORTUGAL PEREZ
Associate Justice



MARIA LOURDES P. A. SERENO
Associate Justice

CERTIFICATION

I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Senior Associate Justice
(Per Section 12, R.A. 296
The Judiciary Act of 1948, as amended)