



Republic of the Philippines
Supreme Court
Baguio City

FIRST DIVISION

**ROYAL SAVINGS BANK, formerly
Comsavings Bank, now GSIS
FAMILY BANK,**

Petitioner,

- versus -

**FERNANDO ASIA, MIKE LATAG,
CORNELIA MARANAN, JIMMY
ONG, CONRADO MACARALAYA,
ROLANDO SABA, TOMAS
GALLEGA, LILIA FEDELIMO,
MILAGROS HAGUTAY and
NORMA GABATIC (Collectively
referred to as respondents Asia, et
al.) represented by their counsel on
record, ATTY. ROGELIO U.
CONCEPCION.,**

Respondent.

G.R. No. 183658

Present:

SERENO, *CJ*, Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
VILLARAMA, JR., and
REYES, *JJ*.

Promulgated:

APR 10 2013

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DECISION

SERENO, *CJ*:

This is a Petition for Review¹ filed by Royal Savings Bank (petitioner), praying for the reversal of the Orders dated 4 October 2007² and 25 June 2008,³ which were rendered by Branch 222 of the Regional Trial Court of Quezon City (RTC) in LRC No. Q-22780 (07). These Orders granted respondents' Urgent Motion to Quash the Writ of Possession and Writ of Execution⁴ issued by the then presiding judge of the RTC in petitioner's favor.

¹ *Rollo*, pp. 9-36.

² *Id.* at 37-39; penned by Pairing Judge Jocelyn A. Solis Reyes.

³ *Id.* at 40-41.

⁴ *Id.* at 57-59.

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Sometime in January 1974, Paciencia Salita (Salita) and her nephew, Franco Valenderia (Valenderia), borrowed the amount of ₱25,000 from petitioner. The latter loaned to them an additional ₱20,000 in May 1975. To secure the payment of the aforementioned amounts loaned, Salita executed a Real Estate Mortgage over her property, which was covered by Transfer Certificate of Title (TCT) No. 103538. Notwithstanding demands, neither Salita nor Valenderia were able to pay off their debts.

As a result of their failure to settle their loans, petitioner instituted an extra-judicial foreclosure proceeding against the Real Estate Mortgage. Pursuant to Act No. 3135, the mortgaged property was sold at a public auction held on 16 October 1979, at which petitioner was the highest bidder. On 23 April 1983, the redemption period expired. Both Salita and Valenderia failed to redeem the foreclosed property. Thus, TCT No. 103538 was cancelled and a new title covering the same property, TCT No. 299440, was issued in petitioner's name.

Thereafter, on 13 August 1984, Salita filed with the RTC a case for Reconveyance, Annulment of Title and Damages against petitioner. She prayed for the nullification of foreclosure proceedings and the reconveyance of the property now covered by TCT No. 299440. The RTC granted her prayer.

Petitioner appealed to the Court of Appeals (CA), which reversed the Decision of the RTC. Since Salita did not appeal the CA ruling, it became final and executory. Accordingly, the Entry of Judgment was issued on 4 June 2002.

Pursuant to Section 7 of Act 3135, petitioner filed with the RTC an Ex-Parte Petition for the Issuance of a Writ of Possession.⁵ The Court, through its Order dated 14 February 2007, required petitioner to present its evidence. Petitioner then submitted a Memorandum of Jurisprudence (In Lieu of Oral Testimony).⁶

In a Decision dated 28 May 2007,⁷ the RTC ruled in favor of petitioner and ordered the issuance of the Writ of Possession in the latter's favor.

Respondents Fernando Asia, Mika Latag, Cornelia Maranan, Jimmy Ong, Conrado Macaralaya, Rolando Saba, Tomas Gallega, Lilia Fedelimo, Milagros Hagutay and Norma Gabatic claimed to have been in open,

⁵ Id. at 42-47.

⁶ Id. at 48-53.

⁷ Id. at 54-55.

continuous, exclusive and notorious possession in the concept of owners of the land in question for 40 years.⁸ Allegedly, they had no knowledge and notice of all proceedings involving the property until they were served a Notice to Vacate⁹ by RTC Sheriff IV Neri Loy, on 20 July 2007.¹⁰ They further claimed that, prior to the service of the Notice to Vacate, they had no knowledge or notice of the lower court's proceedings or the foreclosure suit of petitioner.¹¹

The Notice to Vacate gave respondents three days or until 25 July 2007 to voluntarily vacate the property. In order to prevent the execution of the notice, they filed an Urgent Motion to Quash Writ of Possession and Writ of Execution¹² on even date.

Petitioner filed their Comment¹³ on respondents' Motion to Quash on 14 August 2007.

In an Order dated 4 October 2007,¹⁴ the RTC granted the Motion to Quash. Petitioner filed a Motion for Reconsideration (MR),¹⁵ to which an Opposition was filed by respondents.¹⁶ Petitioner claimed that, six months after the filing of the Opposition, there was still no action taken by the RTC on the MR. Thus, it filed a Motion for Early Resolution¹⁷ on 16 June 2008. Through an Order dated 25 June 2008,¹⁸ the RTC denied petitioner's MR.

Claiming that it raises no factual issues, petitioner came straight to this Court through a Petition for Review under Rule 45 of the Rules on Civil Procedure.

Petitioner insists that because it is a government-owned financial institution, the general rules on real estate mortgage found in Act 3135 do not apply to it. It prays that this Court rule that Presidential Decree (P.D.) No. 385¹⁹—the law intended specifically to govern mortgage foreclosures

⁸ Id. at 118.

⁹ Id. at 60.

¹⁰ Id. at 118.

¹¹ Id.

¹² *Rollo*, pp. 57-59.

¹³ Id. at 61-65.

¹⁴ Id. at 37-39.

¹⁵ Id. at 66-84.

¹⁶ Id. at 85-87.

¹⁷ Id. at 88-93.

¹⁸ Id. at 40-41.

¹⁹ 31 January 1974; REQUIRING GOVERNMENT FINANCIAL INSTITUTIONS TO FORECLOSE MANDATORILY ALL LOANS WITH ARREARAGES, INCLUDING INTEREST AND CHARGES, AMOUNTING TO AT LEAST TWENTY PERCENT (20%) OF THE TOTAL OUTSTANDING OBLIGATION.

initiated by government-owned financial institutions—should be applied to this case.

According to petitioner, when the RTC quashed the Writ of Possession,²⁰ the latter violated Section 2 of P.D. 385, which reads:

Section 2. No restraining order, temporary or permanent injunction shall be issued by the court against any government financial institution in any action taken by such institution in compliance with the mandatory foreclosure provided in Section 1 hereof, whether such restraining order, temporary or permanent injunction is sought by the borrower(s) or any third party or parties, except after due hearing in which it is established by the borrower and admitted by the government financial institution concerned that twenty percent (20%) of the outstanding arrearages has been paid after the filing of foreclosure proceedings.

Thus, petitioner is now saying that, as a government financial institution (GFI), it cannot be enjoined from foreclosing on its delinquent accounts in observance of the mandate of P.D. 385.

We are not persuaded.

Assuming that petitioner is, as it claims, a GFI protected under P.D. 385, this Court is still of the opinion and thus rules that the RTC committed no error in granting respondents' Urgent Motion to Quash Writ of Possession.

Indeed, while this Court had already declared in *Philippine National Bank v. Adil*²¹ that once the property of a debtor is foreclosed and sold to a GFI, it would be mandatory for the court to place the GFI in the possession and control of the property—pursuant to Section 4 of P.D. No. 385—this rule should not be construed as absolute or without exception.

The evident purpose underlying P.D. 385 is sufficiently served by allowing foreclosure proceedings initiated by GFIs to continue until a judgment therein becomes final and executory, without a restraining order, temporary or permanent injunction against it being issued. But if a parcel of land is occupied by a party other than the judgment debtor, the proper procedure is for the court to order a hearing to determine the nature of said adverse possession before it issues a writ of possession.²²

²⁰ *Rollo*, pp. 27-28.

²¹ G.R. No. L-52823, 2 November 2 1982, 118 SCRA 110.

²² *Guevara et al. v. Ramos et al.*, G.R. No. L-24358, 31 March 1971, 38 SCRA 194; *Saavedra et al. v. Siari Valley Estates, Inc., et al.*, 106 Phil. 432 (1959); *Omana v. Gatulayao*, 73 Phil. 66 (1941); *Gozon v. Dela Rosa*, 77 Phil. 919 (1947); *Santiago v. Sheriff of Manila*, 77 Phil. 740 (1946).

This is because a third party, who is not privy to the debtor, is protected by the law. Such third party may be ejected from the premises only after he has been given an opportunity to be heard, to comply with the time-honored principle of due process.²³

In the same vein, under Section 33 of Rule 39 of the Rules on Civil Procedure, the possession of a mortgaged property may be awarded to a purchaser in the extrajudicial foreclosure, unless a third party is actually holding the property adversely *vis-à-vis* the judgment debtor.²⁴

Respondents insist that they are actual possessors in the concept of owners and that they have been occupying the land in the concept of owners for 40 years already.²⁵ Furthermore, respondents made it clear in the Motion to Quash that they were not “claiming rights as attorney-in-fact, nor lessee, nor anything from Mortgagor PACENCIA SALITA.”²⁶ Thus, whatever rights Salita had over the property that were acquired by petitioner when the latter purchased it, cannot be used against respondents, as their claim is adverse to that of Salita.

In the eyes of this Court, the RTC did not err in issuing the herein assailed Orders on the basis of its initial finding that respondents are third parties who are actually holding the property adversely *vis-à-vis* the judgment debtor. The RTC did not err in applying the doctrine laid down in *Barican v. Intermediate Appellate Court*,²⁷ in which we ruled that the obligation of a court to issue a writ of possession in favor of the purchaser in an extrajudicial foreclosure sale ceases to be ministerial, once it appears that there is a third party who is in possession of the property and is claiming a right adverse to that of the debtor/mortgagor.

We explained in *Philippine National Bank v. Austria*²⁸ that the foregoing doctrinal pronouncements are not without support in substantive law, to wit:

x x x. Notably, the Civil Code protects the actual possessor of a property, to wit:

Art. 433. Actual possession under claim of ownership raises a disputable presumption of ownership. The true owner must resort to judicial process for the recovery of the property.

²³ *Unchuan v. CA*, G.R. No. 78775, 31 May 1988.

²⁴ *Philippine National Bank v. Court of Appeals*, 424 Phil. 757 (2002).

²⁵ *Id.* at 118.

²⁶ *Id.* at 56.

²⁷ 245 Phil. 316 (1988).

²⁸ G.R. No. 135219, 17 January 2002.

Under the aforequoted provision, one who claims to be the owner of a property possessed by another must bring the appropriate judicial action for its physical recovery. The term "judicial process" could mean no less than an ejectment suit or reivindicatory action, in which the ownership claims of the contending parties may be properly heard and adjudicated.

We find that it was only proper for the RTC to quash the Writ of Possession until a determination is made as to who, between petitioner and respondents, has the better right to possess the property.


Lastly, petitioner alleges that the pairing judge violated the hierarchy of courts when she quashed the writ of possession validly issued by the then presiding Judge of the RTC Quezon City, a co-equal body.²⁹

No court has the power to interfere by injunction in the issuance or enforcement of a writ of possession issued by another court of concurrent jurisdiction having the power to issue that writ.³⁰ However, as correctly pointed out by respondents in their Comment, it was the same trial court and "not another court or co-equal court body that quashed the subject writ of possession."³¹ The pairing judge, who issued the Order quashing the Writ of Possession, issued it in her capacity as the judge of Branch 222 of Quezon City—the same branch, albeit then under a different judge, that issued the Writ of Possession.

With respect to all the arguments raised by the parties to prove their supposed rightful possession or ownership of the property, suffice it to say that these matters should be threshed out in an appropriate action filed specifically for their resolution.

WHEREFORE, the instant Petition is **DENIED**. The 4 October 2007 and 25 June 2008 Orders issued by Branch 222 of Regional Trial Court of Quezon City in LRC No. Q-22780 (07) are **AFFIRMED**.

SO ORDERED.

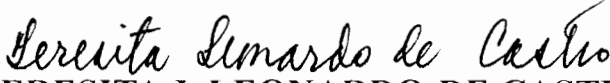

MARIA LOURDES P. A. SERENO
Chief Justice, Chairperson

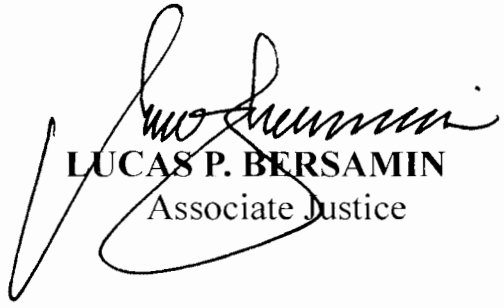
²⁹ *Rollo*, p. 21.

³⁰ *PDGP Development Bank v. Vestil*, 332 Phil. 507, 510 (1996); *Autocorp Group and Autographics, Inc. v. Court of Appeals*, 481 Phil. 298 (2004)


³¹ *Rollo*, p. 133.

WE CONCUR:


TERESITA J. LEONARDO-DE CASTRO
Associate Justice

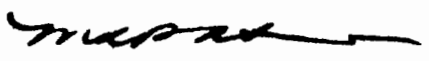

LUCAS P. BERSAMIN
Associate Justice


MARTIN S. VILLARAMA, JR.
Associate Justice


BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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.


MARIA LOURDES P. A. SERENO
Chief Justice