



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

SPOUSES JOSE O. GATUSLAO
and ERMILA LEONILA
LIMSIACO-GATUSLAO,
Petitioners,

G.R. No. 191540

Present:

CARPIO, *Chairperson,*
VELASCO, JR.,
DEL CASTILLO,
MENDOZA, *and*
LEONEN, *JJ.*

- versus -

LEO RAY V. YANSON,
Respondent.

Promulgated:

JAN 21 2015 *Man Cabalag/Projecto*

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DECISION

DEL CASTILLO, *J.:*

Petitioners spouses Jose O. Gatuslao and Ermila Leonila Limsiaco-Gatuslao (petitioners) are assailing the December 8, 2009¹ Order of the Regional Trial Court (RTC) of Bacolod City, Branch 49 in Cad. Case No. 09-2802 which granted respondent Leo Ray² Yanson's (respondent) *Ex Parte* Motion for the Issuance of Writ of Possession over the properties being occupied by petitioners, as well as the February 26, 2010 RTC Order³ denying petitioners' motion for reconsideration thereto.

Factual Antecedents

Petitioner Ermila Leonila Limsiaco-Gatuslao is the daughter of the late Felicisimo Limsiaco (Limsiaco) who died intestate on February 7, 1989. Limsiaco was the registered owner of two parcels of land with improvements in the City of Bacolod described as Lots 10 and 11, Block 8 of the subdivision plan

* Per Special Order No. 1910 dated January 12, 2015.

¹ Records, pp. 55-57; penned by Judge Manuel O. Cardinal, Jr.

² Spelled as "Rey" in some parts of the records.

³ Records, p. 74.

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Psd-38577 and covered by Transfer Certificates of Title (TCT) Nos. T-33429⁴ and T-24331.⁵

Limsiaco mortgaged the said lots along with the house standing thereon to Philippine National Bank (PNB). Upon Limsiaco's failure to pay, PNB extrajudicially foreclosed on the mortgage and caused the properties' sale at a public auction on June 24, 1991 where it emerged as the highest bidder. When the one-year redemption period expired without Limsiaco's estate redeeming the properties, PNB caused the consolidation of titles in its name. Ultimately, the Registry of Deeds of Bacolod City cancelled TCT Nos. T-33429 and T-24331 and in lieu thereof issued TCT Nos. T-308818⁶ and T-308819⁷ in PNB's name on October 25, 2006.

On November 10, 2006, a Deed of Absolute Sale⁸ was executed by PNB conveying the subject properties in favor of respondent. As a consequence thereof, the Registry of Deeds of Bacolod City issued TCT Nos. T-311125⁹ and T-311126¹⁰ in respondent's name in lieu of PNB's titles.

Then, as a registered owner in fee simple of the contested properties, respondent filed with the RTC an *Ex-Parte* Motion for Writ of Possession¹¹ pursuant to Section 7 of Act No. 3135,¹² as amended by Act No. 4118 (Act No. 3135, as amended),¹³ docketed as Cad. Case No. 09-2802.

In their Opposition,¹⁴ petitioners argued that the respondent is not entitled to the issuance of an *ex-parte* writ of possession under Section 7 of Act No. 3135 since he was not the buyer of the subject properties at the public auction sale and only purchased the same through a subsequent sale made by PNB. Not being the purchaser at the public auction sale, respondent cannot file and be granted an *ex parte* motion for a writ of possession. Petitioners also asserted that the intestate estate of Limsiaco has already instituted an action for annulment of foreclosure of mortgage and auction sale affecting the contested properties.¹⁵ They argued that the existence of the said civil suit bars the issuance of the writ of possession and

⁴ Id. at 29-31.

⁵ Id. at 32-35.

⁶ Id. at 25-26.

⁷ Id. at 27-28.

⁸ Id. at 20-23.

⁹ Id. at 9-10.

¹⁰ Id. at 11-12.

¹¹ Id. at 1-4.

¹² *An Act to Regulate the Sale of Property under Special Powers Inserted in or Annexed to Real-Estate Mortgages* (approved on March 6, 1924).

¹³ *An Act to Amend Act Numbered Thirty-One Hundred and Thirty-Five, Entitled "An Act to Regulate the Sale of Property Under Special Powers Inserted in or Annexed to Real-Estate Mortgages"* (approved on December 7, 1933).

¹⁴ Records, pp. 17-19.

¹⁵ The complaint was filed in the RTC of Himamaylan City, Branch 56, docketed as Civil Case No. 271.

that whatever rights and interests respondent may have acquired from PNB by virtue of the sale are still subject to the outcome of the said case.

Ruling of the Regional Trial Court

The RTC granted the issuance of the writ of possession in an Order¹⁶ dated December 8, 2009. It cited the Court's pronouncement in *China Banking Corporation v. Lozada*,¹⁷ viz:

The Court recognizes the rights acquired by the purchaser of the foreclosed property at the public auction sale upon the consolidation of his title when no timely redemption of the property was made, x x x.

It is thus settled that the buyer in a foreclosure sale becomes the absolute owner of the property purchased if it is not redeemed during the period of one year after the registration of the sale. As such, he is entitled to the possession of the said property and can demand it at any time following the consolidation of ownership in his name and the issuance to him of a new transfer certificate of title. x x x Possession of the land then becomes an absolute right of the purchaser as confirmed owner. Upon proper application and proof of title, the issuance of the writ of possession becomes a ministerial duty of the court.

The purchaser, therefore, in the public auction sale of a foreclosed property is entitled to a writ of possession x x x.¹⁸

PNB, therefore, as the absolute owner of the properties is entitled to a writ of possession. And since respondent purchased the properties from PNB, the former has necessarily stepped into the shoes of the latter. Otherwise stated, respondent, by subrogation, has the right to pursue PNB's claims against petitioners as though they were his own.

The dispositive portion of the above Order reads:

WHEREFORE, premises considered, the Court hereby issues a writ of possession in favor of movant Leo Ray V. Yanson ordering Spouses Jose and Mila Gatuslao, their heirs, assigns, successors-in-interest, agents, representatives and/or any and all other occupants or persons claiming any interest or title of the subject property to deliver the possession of said property to the herein movant/petitioner.

SO ORDERED.¹⁹

¹⁶ Records, pp. 55-57.

¹⁷ G.R. No. 164919, July 4, 2008, 557 SCRA 177, 195-196.

¹⁸ Records, pp. 56-57.

¹⁹ Id. at 57.

Petitioners moved for reconsideration²⁰ which was denied in an Order²¹ dated February 26, 2010, thus:

WHEREFORE, the Motion for Reconsideration filed by Oppositors is hereby DENIED. Thus, the Order dated December 8, 2009 stands.

SO ORDERED.²²

Respondent on March 19, 2010 moved to execute the possessory writ²³ while petitioners on April 15, 2010 filed with this Court the present Petition for Review on *Certiorari*.

On September 30, 2010, the RTC issued an Order²⁴ directing the implementation of the writ. And per Sheriff's Return of Service,²⁵ the same was fully implemented on March 14, 2011.

Issues

1. According to petitioners, the pending action for annulment of foreclosure of mortgage and the corresponding sale at public auction of the subject properties operates as a bar to the issuance of a writ of possession;
2. Claiming violation of their right to due process, petitioners likewise assert that as they were not parties to the foreclosure and are, thus, strangers or third parties thereto, they may not be evicted by a mere *ex parte* writ of possession; and
3. Lastly, petitioners argue that respondent, a mere purchaser of the contested properties by way of a negotiated sale between him and PNB, may not avail of a writ of possession pursuant to Section 7 of Act No. 3135, as amended, as he is not the purchaser at the public auction sale. Petitioners further contend that respondent has no right to avail of the writ even by way of subrogation.

Our Ruling

Preliminarily, we note that petitioners' direct resort to this Court from the assailed Orders of the RTC violates the rule on hierarchy of courts. Their remedy

²⁰ Id. at 58-64.

²¹ Id. at 74.

²² Id.

²³ See Motion for Execution of Writ of Possession, id. at 81-83.

²⁴ Id. at 182-184.

²⁵ Id. at 239-241.

lies with the Court of Appeals. Considering however the length of time this case has been pending and in view of our January 26, 2011 Resolution²⁶ giving due course to the Petition, we deem it proper to adjudicate the case on its merits.

The Petition is denied.

It is settled that the issuance of a Writ of Possession may not be stayed by a pending action for annulment of mortgage or the foreclosure itself.

It is petitioners' stand that the pending action for annulment of foreclosure of mortgage and of the corresponding sale at public auction of the subject properties operates as a bar to the issuance of a writ of possession.

The Court rules in the negative. *BPI Family Savings Bank, Inc. v. Golden Power Diesel Sales Center, Inc.*²⁷ reiterates the long-standing rule that:

[I]t is settled that a pending action for annulment of mortgage or foreclosure sale does not stay the issuance of the writ of possession. The trial court, where the application for a writ of possession is filed, does not need to look into the validity of the mortgage or the manner of its foreclosure. The purchaser is entitled to a writ of possession without prejudice to the outcome of the pending annulment case.

This is in line with the ministerial character of the possessory writ. Thus, in *Bank of the Philippine Islands v. Tarampi*,²⁸ it was held:

To stress the ministerial character of the writ of possession, the Court has disallowed injunction to prohibit its issuance, just as it has held that **its issuance may not be stayed by a pending action for annulment of mortgage or the foreclosure itself.**

Clearly then, until the foreclosure sale of the property in question is annulled by a court of competent jurisdiction, the issuance of a writ of possession remains the ministerial duty of the trial court. The same is true with its implementation; otherwise, the writ will be a useless paper judgment – a result inimical to the mandate of Act No. 3135 to vest possession in the purchaser immediately.²⁹ (Emphases supplied)

²⁶ *Rollo*, pp. 84-85.

²⁷ G.R. No. 176019, January 12, 2011, 639 SCRA 405, 418.

²⁸ G.R. No. 174988, December 10, 2008, 573 SCRA 537.

²⁹ *Id.* at 544.

Clearly, petitioners' argument is devoid of merit.

Petitioners are not strangers or third parties to the foreclosure sale; they were not deprived of due process.

Section 7 of Act No. 3135, as amended, sets forth the following procedure in the availment of and issuance of a writ of possession in cases of extrajudicial foreclosures, viz:

SECTION 7. In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance (Regional Trial Court) 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 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, and in each case the clerk of the court shall, upon the filing of such petition, collect the fees specified in paragraph eleven of section one hundred and fourteen of Act Numbered Four hundred and ninety-six, as amended by Act Numbered Twenty-eight hundred and sixty-six, 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.

Although the above provision clearly pertains to a writ of possession availed of and issued within the redemption period of the foreclosure sale, the same procedure also applies to a situation where a purchaser is seeking possession of the foreclosed property bought at the public auction sale *after* the redemption period has expired without redemption having been made.³⁰ The only difference is that in the latter case, no bond is required therefor, as held in *China Banking Corporation v. Lozada*,³¹ thus:

It is thus settled that the buyer in a foreclosure sale becomes the absolute owner of the property purchased if it is not redeemed during the period of one year after the registration of the sale. As such, he is entitled to the possession of the said property and can demand it at any time following the consolidation of ownership in his name and the issuance to him of a new transfer certificate of title. **The buyer can in fact demand possession of the land even during the redemption period except that he has to post a bond in accordance with**

³⁰ *BPI Family Savings Bank, Inc. v. Golden Power Diesel Sales Center, Inc.*, supra note 27 at 414.

³¹ Supra note 17 at 196.

Section 7 of Act No. 3135, as amended. No such bond is required after the redemption period if the property is not redeemed. x x x³² (Emphasis supplied)

Upon the expiration of the period to redeem and no redemption was made, the purchaser, as confirmed owner, has the absolute right to possess the land and the issuance of the writ of possession becomes a ministerial duty of the court upon proper application and proof of title.³³

Nevertheless, where the extrajudicially foreclosed real property is in the possession of a third party who is holding the same adversely to the judgment debtor or mortgagor, the RTC's duty to issue a writ of possession in favor of the purchaser of said real property ceases to be ministerial and, as such, may no longer proceed *ex parte*.³⁴ In such a case, the trial court must order a hearing to determine the nature of the adverse possession.³⁵ For this exception to apply, however, it is not enough that the property is in the possession of a third party, the property must also be held by the third party *adversely to the judgment debtor or mortgagor*,³⁶ such as a co-owner, agricultural tenant or usufructuary.³⁷

In this case, petitioners do not fall under any of the above examples of such a third party holding the subject properties adversely to the mortgagor; nor is their claim to their right of possession analogous to the foregoing situations. Admittedly, they are the mortgagor Limsiaco's heirs. It was precisely because of Limsiaco's death that petitioners obtained the right to possess the subject properties and, as such, are considered transferees or successors-in-interest of the right of possession of the latter. As Limsiaco's successors-in-interest, petitioners merely stepped into his shoes and are, thus, compelled not only to acknowledge but, more importantly, to respect the mortgage he had earlier executed in favor of respondent.³⁸ They cannot effectively assert that their right of possession is adverse to that of Limsiaco as they do not have an independent right of possession other than what they acquired from him.³⁹ Not being third parties who have a right contrary to that of the mortgagor, the trial court was thus justified in issuing the writ and in ordering its implementation.

Petitioners' claim that their right to due process was violated by the mere *ex-parte* issuance of the writ of possession must likewise fail. As explained, petitioners were not occupying the properties adversely to the mortgagor, hence, a

³² Id. at 196.

³³ Id.

³⁴ *Madriaga, Jr. v. China Banking Corporation*, G.R. No. 192377, July 25, 2012, 677 SCRA 560, 572.

³⁵ *BPI Family Savings Bank, Inc. v. Golden Power Diesel Sales Center, Inc.*, supra note 27 at 415-416.

³⁶ *Madriaga, Jr. v. China Banking Corporation*, supra note 34 at 572.

³⁷ Id. at 572-573, citing *BPI Family Savings Bank, Inc. v. Golden Power Diesel Sales Center, Inc.*, supra note 27 at 417-418.

³⁸ *BPI Family Savings Bank, Inc. v. Golden Power Diesel Sales Center, Inc.*, supra note 27 at 417.

³⁹ Id. at 418.

writ of possession may be issued *ex parte*. And precisely because of this *ex parte* nature of the proceedings no notice is needed to be served⁴⁰ upon them. It has been stressed time and again that “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 prevent a separate case for annulment of mortgage and foreclosure sale.”⁴¹ Consequently, the RTC may grant the petition even without petitioners’ participation. Nevertheless, even if the proceedings in this case was supposed to be *ex parte*, the records of the case would show that petitioners’ side on this controversy was actually heard as evidenced by the numerous pleadings⁴² filed by them in the lower court. In fact, in its July 27, 2009 Order,⁴³ the RTC expressly directed respondent, “in observance of equity and fair play x x x to furnish [petitioners] with a copy of his motion/petition and to show x x x proof of compliance thereof x x x.”⁴⁴ Then and now, the Court holds that a party cannot invoke denial of due process when he was given an opportunity to present his side.⁴⁵

Respondent is entitled to the issuance of writ of possession.

Petitioners insist that respondent is not entitled to the issuance of the writ of possession under Section 7 of Act No. 3135 as he is only a buyer of the subject properties in a contract of sale subsequently executed in his favor by the actual purchaser, PNB. To them, it is only the actual purchaser of a property at the public auction sale who can ask the court and be granted a writ of possession.

This argument is not tenable. Respondent, as a transferee or successor-in-interest of PNB by virtue of the contract of sale between them, is considered to have stepped into the shoes of PNB. As such, he is necessarily entitled to avail of the provisions of Section 7 of Act No. 3135, as amended, as if he is PNB. This is apparent in the Deed of Absolute Sale⁴⁶ between the two, *viz*:

1. The Vendor hereby sells, transfer[s] and convey[s] unto[, and] in favor of the Vendee, and the latter’s assigns and successors-in-interest, all of the former’s rights and title to, interests and participation in the

⁴⁰ *Madriaga, Jr. v. China Banking Corporation*, supra note 34 at 569-570.

⁴¹ *Id.* at 570.

⁴² Opposition, records, pp. 17-19; Supplement to Opposition, *id.* at 40-41; Memorandum for Oppositors, *id.* at 4848-54; Motion for Reconsideration (of the Order dated December 8, 2009), *id.* at 58-64; Opposition (to Motion for Execution of Writ of Possession), *id.* at 87-89; Opposition (to Supplemental to Motion for Execution of Writ of Possession), *id.* at 178-181; Motion for Reconsideration (of the Order dated September 30, 2010 directing the implementation of the Writ), *id.* at 186-190; Second Motion for Reconsideration, *id.* at 211-213; Supplement to Second Motion for Reconsideration, *id.* at 218-220; Motion to Quash Writ of Possession, *id.* at 227-229; and Reply (to Comment on the Motion to Quash Writ of Possession), *id.* at 234-236.

⁴³ *Id.* at 13.

⁴⁴ *Id.*

⁴⁵ *Madriaga, Jr. v. China Banking Corporation*, supra note 34 at 570.

⁴⁶ Records, pp. 20-23.

Property on an “AS IS, WHERE IS” basis. It is thus understood that the Vendee has inspected the Property and has ascertained its condition.

x x x x

3. **The Vendor is selling only whatever rights and title to, interests and participation it has acquired over the Property**, and the Vendee hereby acknowledges full knowledge of the nature and extent of the Vendor’s rights and title to, [and] interests and participation in the Property.
4. x x x **The Vendee further agrees to undertake, at its/his/her expense, the ejectment of any occupant of the Property.**⁴⁷ (Emphases in the original)

Verily, one of the rights that PNB acquired as purchaser of the subject properties at the public auction sale, which it could validly convey by way of its subsequent sale of the same to respondent, is the availment of a writ of possession. This can be deduced from the above-quoted stipulation that “[t]he [v]endee further agrees to undertake, at xxx his expense, the ejectment of any occupant of the [p]roperty.” Accordingly, respondent filed the contentious *ex parte* motion for a writ of possession to eject petitioners therefrom and take possession of the subject properties.

Further, respondent may rightfully take possession of the subject properties through a writ of possession, even if he was not the actual buyer thereof at the public auction sale, in consonance with our ruling in *Ermitaño v. Paglas*.⁴⁸ In the said case, therein respondent was petitioner’s lessee in a residential property owned by the latter. During the lifetime of the lease, respondent learned that petitioner mortgaged the subject property in favor of Charlie Yap (Yap) who eventually foreclosed the same. Yap was the purchaser thereof in an extrajudicial foreclosure sale. Respondent ultimately bought the property from Yap. However, it was stipulated in the deed of sale that the property was still subject to petitioner’s right of redemption. Subsequently and despite written demands to pay the amounts corresponding to her monthly rental of the subject property, respondent did not anymore pay rents. Meanwhile, petitioner’s period to redeem the foreclosed property expired on February 23, 2001. Several months after, petitioner filed a case for unlawful detainer against respondent. When the case reached this Court, it ruled that therein respondent’s basis for denying petitioner’s claim for rent was insufficient as the latter, during the period for which payment of rent was being demanded, was still the owner of the foreclosed property. This is because at that time, the period of redemption has not yet expired. Thus, petitioner was still entitled to the physical possession thereof subject, however, to the purchaser’s right to petition the court to give him possession and to file a bond pursuant to the provisions of Section 7 of Act No. 3135, as amended. However, after the expiration of the redemption period without redemption having been made by petitioner, respondent became the owner thereof and consolidation of

⁴⁷ Id. at 20.

⁴⁸ G.R. No. 174436, January 23, 2013, 689 SCRA 158.

title becomes a right. Being already then the owner, respondent became entitled to possession. Consequently, petitioner's ejectment suit was held to have been rendered moot by the expiration of the period of redemption without petitioner redeeming the properties. This is considering that petitioner already lost his possessory right over the property after the expiration of the said period.

Although the main issue in *Ermitaño* was whether respondent was correct in refusing to pay rent to petitioner on the basis of her having bought the latter's foreclosed property from whom it was mortgaged, the case is enlightening as it acknowledged respondent's right, as a subsequent buyer of the properties from the actual purchaser of the same in the public auction sale, to possess the property after the expiration of the period to redeem *sans* any redemption. Verily, *Ermitaño* demonstrates the applicability of the provisions of Section 7 of Act No. 3135 to such a subsequent purchaser like respondent in the present case.

All told, the Court affirms the RTC's issuance of the Writ of Possession in favor of respondent.

WHEREFORE, the Petition is hereby **DENIED**. The December 8, 2009 and February 26, 2010 Orders of the Regional Trial Court of Bacolod City, Branch 49 in Cad. Case No. 09-2802 are **AFFIRMED**.

SO ORDERED.



MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Associate Justice
Chairperson


PRESBITERO J. VELASCO, JR.
Associate Justice



JOSE CATRAL MENDOZA
Associate Justice



MARVIC M. F. LEONEN
Associate Justice

ATTESTATION


I attest 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
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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

