



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

**ROGER CABUHAT AND CONCHITA
CABUHAT,**

Petitioners,

- versus -

**DEVELOPMENT BANK OF THE
PHILIPPINES, represented by Manager
Perla L. Favila,**

Respondent.

G.R. No. 203924

Present:

CARPIO, J., *Chairperson*,
BRION,
DEL CASTILLO,*
MENDOZA, and
LEONEN, JJ.

Promulgated:

29 JUN 2016

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DECISION

BRION, J.:

This is a petition for review on *certiorari* assailing the Regional Trial Court's (RTC) June 27, 2012 and October 23, 2012 orders dismissing Roger and Conchita Cabuhat's Petition to Set Aside the Foreclosure Sale in **Civil Case No. 1741.**¹

Antecedents

The subject of this case is a 292 square-meter property (*subject lot*) in Barangay Poblacion, Municipality of Narra, Palawan, formerly covered by **Original Certificate of Title (OCT) No. C-2372** registered in the name of petitioner Roger Cabuhat.

On August 30, 1993, Roger – together with his parents Rodolfo and Conchita Cabuhat – mortgaged the subject lot to respondent Development

* On Leave.

¹ Both penned by Acting Presiding Judge Bienvenido C. Blancaflor, RTC of Palawan and Puerto Princesa City, Branch 48.

Bank of the Philippines (*DBP*) to secure a two (2) million peso loan. The mortgage was annotated on August 31, 1993 as Entry No. 6501.²

DBP allegedly released/cancelled this mortgage on October 26, 1998.³

Four days later on October 30, 1998, Conchita and Roger mortgaged the subject lot to DBP again to secure their outstanding **six (6) million peso loan**. The mortgage was annotated on November 27, 1998 as Entry No. 11815.⁴

The Cabuhats failed to pay their loan, prompting DBP to extra-judicially foreclose the property. DBP won the public auction at a bid of ₱2,001,900. DBP received a Certificate of Sale dated June 28, 1999.⁵

On July 6, 1999, the Certificate of Sale was annotated on OCT No. C-2372.⁶

The Cabuhats failed to redeem the subject lot. Consequently, DBP consolidated the title in its name. Thus, on December 10, 2003, TCT No. T-17115 was issued cancelling OCT No. C-2372.

On July 25, 2005, DBP filed an *ex parte* petition for the issuance of a writ of possession before the RTC.⁷ The petition was raffled to RTC, Puerto Princesa City, Branch 48 and docketed as **Civil Case No. 1741**.

The RTC notified the Cabuhats who filed an opposition. The RTC nevertheless issued the writ of possession on May 15, 2007,⁸ because it was its ministerial duty to issue the writ upon the purchaser's consolidation of title following the non-redemption of the property.⁹

The Cabuhats appealed the RTC's May 15, 2007 Order in **CA-G.R. CV. No. 92449**,¹⁰ arguing that their opposition was meritorious. However, the Court of Appeals (*CA*) denied the appeal on January 21, 2010, emphasizing the summary and non-litigious character of the *ex parte* proceedings for a writ of possession.

The Cabuhats appealed the denial to this Court in **G.R. No. 193367**. On November 15, 2010, we denied the petition for failure to sufficiently show any reversible errors in the *CA*'s decision.¹¹

On October 27, 2011, the Cabuhats filed an *Urgent Motion/Petition to Set Aside the Foreclosure Sale and to Cancel the Writ of Possession*.¹²

² *Rollo*, pp. 10, 187.

³ *Id.* at 10.

⁴ *Id.* at 10, 188.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at 11, 114, 134, 188.

⁸ *Id.* at 44.

⁹ *Id.* at 48.

¹⁰ *Id.* at 132.

¹¹ *Id.* at 151.

¹² *Id.* at 49.

Citing the June 29, 1999 Certificate of Sale, they claimed that the foreclosure was executed pursuant to the cancelled **August 31, 1993 mortgage instead of the existing October 30, 1998 mortgage.**¹³ Hence, the foreclosure and the writ of possession were void because they stemmed from an inexistent contract.¹⁴

They further invoked the RTC's equity jurisdiction to suspend the implementation of the writ of possession.¹⁵

On October 28, 2011, the RTC refused to suspend the implementation of the writ due to its ministerial character. However, it required DBP to comment on the motion/petition.¹⁶

On November 22, 2011, the writ of possession was finally implemented.

In its December 9, 2011 Comment,¹⁷ DBP pointed out that it already sold and turned-over the subject lot to a buyer on November 22, 2011. Therefore, it no longer had any legal interest in the case.

DBP further pointed out that the Cabuhats were forum shopping because they had already filed a complaint to set aside the same foreclosure proceedings and to nullify the 1998 mortgage.¹⁸ The case was pending before the RTC, Puerto Princesa, Branch 95, and docketed as **Civil Case No. 4546.**

In their Reply,¹⁹ the Cabuhats emphasized that DBP only raised two issues: (1) its lack of legal interest in the suit; and (2) the Cabuhats' alleged forum shopping. They insisted that unlike Land Case No. 1741, Civil Case No. 4546 involves the 1998 mortgage, not the cancelled 1993 mortgage.

On April 4, 2012, the Cabuhats filed an Omnibus Motion praying for RTC to immediately resolve: (1) DBP's opposition²⁰ and (2) the validity of an extrajudicial foreclosure of an inexistent/cancelled mortgage.²¹

On June 27, 2012, the RTC issued the assailed Order. The RTC held that DBP remains a real party-in-interest despite the sale because there had been no motion for substitution of the parties.²² It also denied the DBP's forum shopping argument because an *ex parte* proceeding for the issuance of

¹³ Id. at 50-51.

¹⁴ Id. at 50.

¹⁵ Id. at 53.

¹⁶ Id. at 61.

¹⁷ Id. at 69.

¹⁸ Id. at 69-70.

¹⁹ Id. at 72.

²⁰ Id. at 77.

²¹ Id. at 80.

²² Id. at 24.

a writ of possession is not a judgment on the merits that can amount to *res judicata*.²³

However, the RTC dismissed the Cabuhats' petition. It reasoned that under Section 8 of Act No. 3135, a petition to set aside the foreclosure sale and cancel the writ of possession can only be filed within the 30-day period immediately *after* the purchaser acquires possession. Considering that it filed before the DBP entered possession, the petition was premature.

The Cabuhats moved for reconsideration²⁴ but the RTC denied the motion. Hence, the present petition.

The Arguments

The Cabuhats justify their direct resort to this Court by asserting that they only raise pure questions of law.²⁵ They argue that the RTC misinterpreted Section 8 of Act No. 3135 because the law does not prohibit the mortgagor from filing the petition to set aside the foreclosure before the purchaser actually acquires possession.

They argue that the dismissal of their petition based on a ground that DBP did not raise is invalid.²⁶ Lastly, they insist that the foreclosure was void because: (1) DBP did not have a special power of authority to foreclose the property; and (2) the foreclosure was made pursuant to the cancelled/inexistent 1993 mortgage.²⁷

DBP counters that it foreclosed the property pursuant to the October 30, 1998 mortgage after the Cabuhats failed to pay their loan.²⁸ It also reiterates that it already lost legal interest over the property and moves to be substituted by the buyer.²⁹

Citing *Sps. Ong v. Court of Appeals*,³⁰ DBP also adopts the RTC's interpretation of Section 8 of Act No. 3135.³¹

Further, DBP points out that the Cabuhats already have a pending case to set aside the foreclosure sale in Civil Case No. 4546. DBP emphasizes that in their complaint, the Cabuhats admitted that the foreclosure was made pursuant to the 1998 mortgage.³²

²³ Id.

²⁴ Id. at 28.

²⁵ Id. at 9.

²⁶ Id. at 15.

²⁷ Id. at 18.

²⁸ Id. at 113.

²⁹ Id. at 121-122.

³⁰ 388 Phil. 857 (2000).

³¹ *Rollo*, p. 123.

³² Id. at 125.

Lastly, DBP protests that the existence or validity of the mortgage and the foreclosure sale is a factual matter and an improper subject of a review on *certiorari*.³³

Our Ruling

We **DENY** the petition for lack of merit.

At the outset, we note that, as DBP observed, the petition does not raise pure questions of law. Despite the Cabuhats' insistence, DBP maintains that the foreclosure was based on the 1998 mortgage – a valid and existing agreement. The Cabuhats' contention that the foreclosure was made pursuant to a void/cancelled/inexistent mortgage is a question of fact beyond the scope of this review. This alone warrants the outright dismissal of the petition for being the wrong remedy.

Even if the rules of procedure were relaxed to accommodate the petition, it should still be denied for lack of merit.

We agree with the Cabuhats that the RTC misinterpreted the reglementary period under Section 8 of Act No. 3135. It held that a petition to set aside the sale and cancel the writ of possession cannot be filed until the purchaser is placed in possession of the property. However, this finds no support in the law:

Section 8. The debtor may, **in the proceedings in which possession was requested, but not later than thirty days after the purchaser was given possession**, petition that the sale be set aside and the writ of possession cancelled x x x. (emphasis supplied)

The provision does not prohibit a purchaser from filing the petition before the purchaser enters into possession. The limitation merely prohibits the filing of the petition *beyond* thirty days from the purchaser's possession of the property.

The rationale for the 30-day period and the reckoning point of the purchaser's possession is the character of the proceedings. A petition to set aside the sale and/or cancel the writ of possession is filed *in the same proceedings in which possession is requested*. Under Section 7 of Act No. 3135, this proceeding is *ex parte* and non-litigious; there is no need to notify or hear the mortgagor.

Considering that Act No. 3135 does not require the creditor to notify the debtor or the mortgagor of the extrajudicial foreclosure, it is possible that a mortgagor will not discover the proceedings until the writ of possession is implemented.

³³

Id. at 128.

Section 8 provides a 30-day cutoff period to set aside the sale reckoned from the date when the mortgagor is presumed to have received notice. Nevertheless, it does not prohibit the mortgagor from filing the petition earlier in case he learns of the proceedings beforehand. The petition to set aside the foreclosure sale is not premature if the sale has already taken place because the cause of action had already ripened.

DBP's reliance on *Ong v. Court of Appeals* is misplaced. The thrust of *Ong* is that the mortgagor cannot restrain the issuance or the implementation of a writ of possession under Section 7 because it is ministerial upon the RTC to put the purchaser in possession of the property upon: (1) the mortgagor's failure to redeem; and (2) consolidation of the title in the purchaser's name. Consistent with the law, *Ong* does not prohibit the mortgagor from filing the petition before the purchaser actually enters possession.

However, even though the Cabuhats' petition before the RTC was not premature, it was still subject to dismissal for going beyond the scope of Section 8. For emphasis, Section 8 reads:

Section 8. The debtor may, **in the proceedings in which possession was requested**, but not later than thirty days after the purchaser was given possession, petition that the sale be set aside and the writ of possession cancelled, specifying the damages suffered by him, because **the mortgage was not violated or the sale was not made in accordance with the provisions hereof**, and the court shall take cognizance of this petition in accordance with the summary procedure x x x. (emphasis supplied)

A petition under Section 8 is limited to two grounds: (1) that the mortgage was not violated, meaning the debtor has not missed any payments of his loan; or (2) that the foreclosure sale did not comply with the procedural requirements under Sections 1-4 of Act No. 3135.³⁴

These grounds are exclusive. More importantly, both grounds implicitly *admit the existence and validity of the mortgage* – a fact that the

³⁴ Section 1. When a sale is made under a special power inserted in or attached to any real-estate mortgage hereafter made as security for the payment of money or the fulfillment of any other obligation, the provisions of the following election shall govern as to the manner in which the sale and redemption shall be effected, whether or not provision for the same is made in the power.

Sec. 2. Said sale cannot be made legally outside of the province in which the property sold is situated; and in case the place within said province in which the sale is to be made is subject to stipulation, such sale shall be made in said place or in the municipal building of the municipality in which the property or part thereof is situated.

Sec. 3. Notice shall be given by posting notices of the sale for not less than twenty days in at least three public places of the municipality or city where the property is situated, and if such property is worth more than four hundred pesos, such notice shall also be published once a week for at least three consecutive weeks in a newspaper of general circulation in the municipality or city.

Sec. 4. The sale shall be made at public auction, between the hours of nine in the morning and four in the afternoon; and shall be under the direction of the sheriff of the province, the justice or auxiliary justice of the peace of the municipality in which such sale has to be made, or a notary public of said municipality, who shall be entitled to collect a fee of five pesos each day of actual work performed, in addition to his expenses.

Cabuhats' petition denies. Accordingly, the Cabuhats' October 27, 2011 Urgent Motion/Petition went beyond the permissible scope of Section 8.

A petition under Section 8 of Act No. 3135 is *filed in the same proceedings where possession is requested*. This is a summary proceeding under Section 7 because the issuance of a writ of possession is a *ministerial function* of the RTC. This possessory proceeding is *not* a judgment on the merits, but simply *an incident in the transfer of title*.³⁵ Consequently, the judgment cannot produce the effect of *res judicata*.

A Section 8 proceeding is narrowly designed only to **set aside the sale and/or the order granting possession** under Section 7. It cannot annul the validity of the foreclosure or of the mortgage. Due to its very limited scope, it cannot entertain issues beyond the procedural irregularities in the sale.

The remedy of a litigant who challenges the existence of the mortgage or the validity – not the regularity – of the foreclosure is a separate action to annul them. These grounds outside Section 8 have to be threshed out in a full-blown trial.

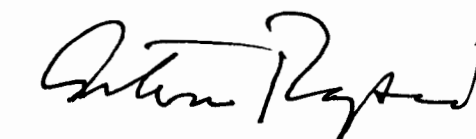
Lastly, this Court notes the pendency of **Civil Case No. 4546** where the parties are already litigating the validity of both the foreclosure sale and the mortgage that led to the sale. This present petition only contributes to the multiplicity of suits that only serve to clog our dockets.

WHEREFORE, we DENY the petition for lack of merit.

SO ORDERED.


ARTURO D. BRION
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Associate Justice
Chairperson

³⁵ *Ong v. Court of Appeals*, *supra* note 30, at 867-868.


(On Leave)
MARIANO C. DEL CASTILLO
Associate Justice


JOSE CATRAL MENDOZA
Associate Justice


MARVIC M.V.F. LEONEN
Associate Justice

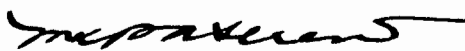
ATTESTATION

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, Second Division

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