

## THIRD DIVISION

[ G.R. No. 105760, July 07, 1997 ]

**PHILIPPINE NATIONAL BANK, PETITIONER, VS. COURT OF APPEALS, HON. JUDGE OF THE REGIONAL TRIAL COURT OF GAPAN, NUEVA ECIJA, BR. 34, AND NILDEFONSO MONTANO, RESPONDENTS.**

### DECISION

**FRANCISCO, J.:**

This is a Petition for Review on *Certiorari* of the Resolution of the Court of Appeals (CA) dated June 3, 1992, in the case docketed as C.A.-G.R. SP No. 23573, entitled Philippine National Bank vs. Hon. Judge of the Regional Trial Court of Gapan, Nueva Ecija, Branch 34, et. al. In said Resolution, the CA granted private respondent Nildefonso Montano's Motion for Reconsideration of its Decision dated September 13, 1991, thereby affirming the Order of the Regional Trial Court of Gapan, Nueva Ecija, Branch 34, dissolving the Writ of Possession issued in favor of petitioner Philippine National Bank (PNB).

The facts, as culled from the parties' pleadings, are as follows:

In 1978, spouses Crisanto de la Cruz and Pepita Montano mortgaged two parcels of land to petitioner PNB for a loan of Twenty-four Thousand Pesos (P24,000.00). Said parcels of land were covered by Transfer Certificate of Title No. NT-117562, and more particularly described as:

1. Lot 614-F, Psd 36331 of the Cabiao Cadastre, containing an area of 3,869 square meters, and
2. Lot 614-H, Psd 36331 of Cabiao Cadastre, containing an area of 4,078 square meters.

On October 12, 1984, petitioner PNB extrajudicially foreclosed the mortgage and was the only bidder at the public auction sale. Thus, on the same day, a Certificate of Sale over said lots was issued in favor of PNB; this fact was subsequently annotated on TCT No. NT-117562 on November 28, 1984.

On September 24, 1986, petitioner PNB filed before the Regional Trial Court of Gapan, Nueva Ecija, Branch 34, a Petition for the Issuance of a Writ of Possession, alleging therein that by virtue of a foreclosure sale wherein it purchased the subject properties and due to the mortgagors' (spouses Crisanto de la Cruz and Pepita Montano) failure to redeem the property within a period of one year, it had become the absolute owner of the same and is entitled to a Writ of Possession. Said petition was granted by the RTC and the writ prayed for was issued on November 20, 1986.

Before implementation of the writ, herein private respondent Montano filed a Motion for the Dissolution of the Writ of Possession on December 9, 1986, alleging that (1) he was instituted as tenant on the subject property even before 1972 by the former owners of the land; (2) the two lots are the subject matters of CAR Case No. 2387 before the Regional Trial Court of Gapan, Nueva Ecija, Branch 36, which he instituted on January 18, 1983 against spouses Crisanto de la Cruz and Pepita Montano; (3) after the foreclosure of the subject land, his (Montano's) counsel wrote PNB of the pending case between the mortgagors and private respondent as tenant on the land; (4) the issuance of said Writ in PNB's favor would work grave injustice to him and violate his rights under P.D. 27, P.D. 36, P.D. 583, and other laws and legal issuances on land reform; (5) he was issued a certification by the Cabiao-San Isidro Agrarian Reform Team No. 03-04-028 that he is an agricultural lessee in the subject landholding and another certification that he is an active member of the Samahang Nayon; and (6) in line with the ruling in "Clapano vs. Gapultos" (132 SCRA 429) that possession of property is given to a purchaser in Extra-Judicial foreclosure unless a third-party is actually holding the property adversely to the judgment debtor, he is to be considered a "third person".

After hearing, the RTC granted private respondent Montano's motion to dissolve the writ of possession in an Order dated August 28, 1990. Petitioner PNB appealed said Order to this Court, but pursuant to a Resolution dated November 7, 1990, the case was referred to the CA.

On September 13, 1991, the CA rendered judgment in favor of petitioner PNB. However, said court reversed itself when, upon motion by private respondent Montano, it issued a Resolution dated June 3, 1993, reconsidering its Decision and affirming the RTC's Order of August 28, 1990 dissolving the Writ of Possession. Hence, this petition for Review on Certiorari, wherein petitioner PNB alleges that the decision of the CA is not in accordance with law and jurisprudence, contending that:

## **"I.**

THE COURT OF APPEALS ERRED IN HOLDING THAT PNB'S RIGHT TO A WRIT OF POSSESSION TO THE LOTS IS PREMATURE BECAUSE PNB AS BUYER ON FORECLOSURE SALE HAS NOT YET CONSOLIDATED ITS TITLE TO THE LOTS WHICH COULD HAVE VESTED UPON IT ABSOLUTE OWNERSHIP AND POSSESSION. WITHOUT REDEMPTION BY THE MORTGAGORS, ALMOST EIGHT (8) YEARS ALREADY LAPSED FROM REGISTRATION OF THE CERTIFICATE OF SALE ON NOVEMBER 12, 1984 TO THE CHALLENGED JUNE 12, 1992 COURT OF APPEALS RESOLUTION. CONSOLIDATION OF TITLE IS NOT A CONDITION PRECEDENT TO PNB'S RIGHT TO THE WRIT AS OWNER UNDER ART. 428 AND 429 OF THE CIVIL CODE, REPUBLIC ACT NO. 3135, AS AMENDED, AND P.D. NO. 385. IT IS THE MINISTERIAL DUTY OF THE COURT TO PUT PNB IN POSSESSION OF THE LOTS DURING AND AFTER THE REDEMPTION PERIOD.

## **II.**

THE COURT OF APPEALS ERRED IN HOLDING THAT THE SUPERVENING JULY 23, 1991 DECISION IN THE AGRARIAN SUIT (IN RTC GAPAN, BR. 36, CIVIL CASE NO. 2387, FILED BY MONTANO AGAINST CRISANTO DE

LA CRUZ AND PEPITA MONTANO ONLY) ADVERSELY AFFECTED PNB, AS PROCEEDINGS IN FILE NO. 0058 (IN RTC GAPAN, BRANCH 34), THE PRECURSOR OF THIS APPEALED CASE, ON INTERVENTION BY MONTANO ON DECEMBER 15, 1986, BECAME ADVERSARIAL, AS ON SAID DATE PNB CANNOT ANYMORE IGNORE MONTANO'S ACTUAL POSSESSION OF THE LOTS, AND AS ACTUAL KNOWLEDGE BY PNB OF MONTANO'S POSSESSION DECLARED LEGITIMATE AND RIGHTFUL BY SAID DECISION, IS EQUIVALENT TO REGISTRATION. HAVING RELIED ON TCT NO NT-117562 IN GOOD FAITH AND FOR VALUE, PNB'S RIGHT TO THE LOTS IS INCONTESTABLE. MONTANO'S TENANCY CLAIM WHICH DOES NOT APPEAR ON THE TITLE, IS NOT OTHERWISE KNOWN TO PNB ON ITS OCULAR INSPECTION IN 1978, AND IS BARRED BY LACHES, NEGLIGENCE AND ESTOPPEL. DESPITE KNOWLEDGE THAT THE LOTS WERE MORTGAGED AND SOLD TO PNB, MONTANO CONVENIENTLY FAILED TO IMPLEAD THE BANK IN THE AGRARIAN SUIT; PNB IS NOT BOUND BY THE DECISION IN SAID SUIT; AND IF IN FACT HE WERE A LEGITIMATE TENANT, HIS RIGHTS CAN BE AMPLY VENTILATED IN A PROPER PROCEEDING. MONTANO'S STAY ON THE LOT BEING ILLEGAL, HE IS HARDLY 'THE THIRD PERSON HOLDING THE PROPERTY ADVERSE TO THE MORTGAGOR'.

### **III.**

THE COURT OF APPEALS ERRED IN DEPRIVING PNB OF ITS RIGHT AS OWNER TO TAKE POSSESSION OF THE LOTS AND, VIRTUALLY, TO SELL THE SAME CONTRARY TO THE CONSTITUTIONAL GUARANTEE OF RIGHT TO PROPERTY (ART. III, SEC. 1, 1987 CONSTITUTION). THE SOCIAL JUSTICE PROVISION OF THE 1987 CONSTITUTION CITED BY THE COURT OF APPEALS IS NOT APPLICABLE."

Private respondent Montano, on the other hand, argued in his Comment that even the jurisprudence cited by petitioner PNB states that the writ of possession will issue only after confirmation of title (F. David Enterprises v. Insular Bank, 191 SCRA 516; GSIS vs. Court of Appeals, 145 SCRA 341) or during the redemption period provided a proper motion has been filed, a bond approved, and there is no third person involved (Banco Filipino Savings and Mortgage Bank vs. IAC, 142 SCRA 46; PNB vs. Midpantao Adil, 118 SCRA 110). He likewise acknowledged petitioner PNB as the owner of the subject land, but asserted that he (Montano) remains to be its lawful possessor as tenant of the landholding who has been given security of tenure by existing laws.

Later, in its Reply to private respondent Montano's Comment, petitioner PNB manifested that it has consolidated its title over the land and a new Transfer Certificate of Title has been issued in its name. Hence, the defect of prematurity has been cured, and there exists no obstacle to the issuance of a Writ of Possession in its favor.

We find the petition devoid of merit.

Granting that petitioner PNB's title over the subject property has been consolidated or confirmed in its favor, it is still not entitled to a writ of possession, as the same may be issued in extrajudicial foreclosure of real estate mortgage only if the debtor