

## THIRD DIVISION

[ G.R. No. 213736, June 17, 2020 ]

**ALFREDO F. SY AND RODOLFO F. SY, PETITIONERS, VS. CHINA  
BANKING CORPORATION, RESPONDENT.**

### DECISION

#### CARANDANG, J.:

Before this Court is a Petition for Review on *Certiorari* with Prayer for Issuance of Temporary Restraining Order and/or Preliminary Injunction<sup>[1]</sup> under Rule 45 of the Rules of Court, assailing the Decision<sup>[2]</sup> dated September 18, 2013 and the Resolution<sup>[3]</sup> dated July 1, 2014 of the Court of Appeals (CA) in CA-G.R. CEB SP No. 05994 filed by Alfredo F. Sy (Alfredo) and Rodolfo F. Sy (Rodolfo; collectively, petitioners) against China Banking Corporation (China Bank).

This case involves Lot No. 4740 (subject property), which is located in Linao-Lipata, Minglanilla, Cebu City with an area of 8,371 square meters. It is covered by Transfer Certificate of Title (TCT) No. 5235<sup>[4]</sup> in the name of Bernandina Fernandez (Bernandina), married to Sy Thian Un. The spouses had eight children, namely: Petra, Priscilo, Elena, Rogelio, Dulcee, Alfredo, Manuel, and Rodolfo.<sup>[5]</sup>

On July 18, 1969, Bernandina simulated a Deed of Absolute Sale<sup>[6]</sup> over the subject property in favor of her son, Priscilo, to enable the latter to start a livestock-poultry business. Because of this, Priscilo caused the issuance of TCT No. 21283<sup>[7]</sup> over the subject property in his name. Subsequently, Priscilo mortgaged the subject property to the Development Bank of the Philippines (DBP) but he was not able to pay the indebtedness, hence, the subject property was foreclosed. Priscilo then migrated to the United States and executed a Special Power of Attorney<sup>[8]</sup> (SPA) authorizing his sister, Elena, to redeem the subject property in favor of their younger brothers, herein petitioners, who are the actual occupants of the subject property. However, after redeeming the subject property, Elena allegedly forged the signatures of Priscilo and the latter's wife, and, through the forged signatures, she executed a Deed of Waiver and Relinquishment of Rights<sup>[9]</sup> dated November 22, 1993 and a Deed of Donation<sup>[10]</sup> dated February 21, 1994 in favor of her children, Eleazar Jr. and Elaine Adlawan. As a result, TCT No. T-83948<sup>[11]</sup> was issued in the names of Eleazar Jr. and Elaine.<sup>[12]</sup>

Thereafter, Eleazar Jr. and Elaine (mortgagors) mortgaged the property to China Bank as security for their loan which amounted to P3,700,000.00. Due to their inability to pay, China Bank foreclosed the property and in the public auction dated September 28, 1988, China Bank was declared the highest bidder for the amount of P4,200,000.00. The mortgagors failed to redeem the subject property within the one-year redemption period. Accordingly, China Bank consolidated its title over the

subject property and on December 16, 1999, TCT No. 111058<sup>[13]</sup> was issued in its name.<sup>[14]</sup>

On December 11, 2000, China Bank filed before the Regional Trial Court (RTC), of Cebu City, Branch 15, a Petition for the Issuance of a Writ of Possession.<sup>[15]</sup> On December 30, 2000, the RTC issued the Writ of Possession<sup>[16]</sup> and corresponding Notice to Vacate<sup>[17]</sup> dated January 5, 2001 in China Bank's favor.<sup>[18]</sup>

Aggrieved, petitioners filed a motion before the RTC for the dissolution of the Writ of Possession on the ground that they were the actual possessors of the subject property. Petitioners further alleged that the mortgagors of the property fraudulently caused the title to be transferred to their names through falsification of public documents.<sup>[19]</sup> The RTC granted petitioners' motion and issued an Order<sup>[20]</sup> dissolving the Writ of Possession. China Bank appealed but it was dismissed through a Resolution<sup>[21]</sup> dated October 23, 2003 for failure to pay the required docket fees. China Bank's motion for reconsideration was likewise denied on November 21, 2002.<sup>[22]</sup>

Meanwhile, on August 21, 1998, petitioners filed an action for recovery of ownership, possession and partition docketed as Civil Case No. CEB-22570 as well as criminal cases for Estafa through Falsification of Public Documents against the mortgagors under I.S Nos. 99-13219-13220.<sup>[23]</sup>

On the other hand, insistent of its claim, China Bank filed before the RTC a second petition for issuance of a Writ of Possession<sup>[24]</sup> on January 22, 2009. The same was granted by the RTC on January 4, 2010, and a new Writ of Possession was issued in favor of China Bank.<sup>[25]</sup> The second Writ of Possession did not mention the previous Writ of Possession which was dissolved and the China Bank, in its second application, did not also mention the fact that the first Writ of Possession was dissolved and that the dissolution has become final.

Petitioners again opposed China Bank's second Writ of Possession through an Omnibus Motion,<sup>[26]</sup> but this time the RTC denied petitioners' Omnibus Motion through an Order<sup>[27]</sup> dated April 7, 2010, which is being assailed in this petition for review on *certiorari*.

In denying petitioners' Omnibus Motion, the RTC ruled that possession of the subject property is an absolute right of the purchaser in a foreclosure proceeding, and that upon consolidation of the purchaser's title, the issuance of the writ of possession becomes a ministerial duty of the court.<sup>[28]</sup> Further, the RTC held that an application for the writ of possession is *ex parte* in nature.<sup>[29]</sup> The RTC also noted that in the Sheriffs Report, there was an attached Undertaking signed by petitioners stating that they recognized the superior right of China Bank to possess the subject property such that they requested for a non-extendible period of seven (7) days to extend their stay in the property purely for humanitarian reasons.<sup>[30]</sup> Lastly, the RTC determined that petitioners who hold the subject property adversely to the defaulted mortgagors are given by the law other remedies like *terceria*, to determine whether the Sheriff had rightly or wrongly taken hold of the foreclosed property that does not belong to the judgment debtor, or an independent action to

vindicate their claim of ownership or possession over the foreclosed property.<sup>[31]</sup>

Petitioners moved for reconsideration of the RTC's Order but the same was denied through an Order<sup>[32]</sup> dated May 25, 2011. Undaunted, they filed a Petition for *Certiorari*<sup>[33]</sup> under Rule 65 of the Rules of Court to the Court of Appeals (CA).

On September 18, 2013, the CA rendered its Decision<sup>[34]</sup> denying the petition. Preliminarily, the CA discussed that the remedy of *certiorari* used by petitioners in questioning the RTC's orders was improper because the issuance of the Writ of Possession was ministerial in nature, which does not involve any discretion.<sup>[35]</sup> Secondly, the CA held that the initial dissolution of the first Writ of Possession issued by the RTC was not binding and did not bar China Bank from praying for another writ of possession.<sup>[36]</sup> The CA determined that *res judicata* is not applicable in this case because an *ex parte* petition for the issuance of a possessory writ is not a litigious judicial process under the Rules of Court.<sup>[37]</sup> Lastly, the CA gave probative value to the Undertaking signed by petitioners because the latter failed to present contrary evidence thereto.<sup>[38]</sup>

On reconsideration, the CA maintained its ruling against petitioners in its Resolution<sup>[39]</sup> dated July 1, 2014.

Petitioners now seek this Court's review in this Petition for Review on *Certiorari*<sup>[40]</sup> that China Bank counters in its Comment.<sup>[41]</sup>

### **Issue**

The issue in this case is whether the issuance of the Writ of Possession, in favor of China Bank and against petitioners, was proper.

### **Ruling of the Court**

The petition is meritorious.

China Bank argues that it is the RTC's ministerial duty to issue the Writ of Possession in its favor after title over the property has been consolidated in its name. It maintains that an application for the issuance of a writ of possession is *ex parte* in nature, and that there is even no need to notify the adverse party of the application.

Indeed, the *ex parte* application for writ of possession is a non-litigious summary proceeding without need of posting a bond, except when possession is being sought during the redemption period. It is a time-honored legal precept that after the consolidation of titles in the buyer's name, for failure of the mortgagor to redeem, entitlement to a writ of possession becomes a matter of right. As the confirmed owner, the purchaser's right to possession becomes absolute. There is even no need for him to post a bond, and it is the ministerial duty of the courts to issue the same upon proper application and proof of title.<sup>[42]</sup>

Therefore, the general rule is that the court possesses no discretion to deny an

application for writ of possession if the judgment debtor failed to redeem the foreclosed property within the legal redemption period and hence, ownership is consolidated to the purchaser in the extrajudicial foreclosure sale. The purchaser's possessory right is a legal outgrowth of his or her consolidated ownership — or right of ownership over the foreclosed property — and shall accordingly be recognized by the court through the grant of possessory writ in favor of the purchaser.

However, this general rule is not without exception, and We are convinced that the exception, rather than the general rule, shall apply in this case.

The exception is found in Section 33, Rule 39 of the Rules of Court, *viz.*:

*Section 33. Deed and possession to be given at expiration of redemption period; by whom executed or given. —*

x x x x

Upon the **expiration of the right of redemption**, the purchaser or redemptioner shall be substituted to and acquire all the rights, title, interest and claim of the judgment obligor to the property as of the time of the levy. 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.**<sup>[43]</sup> (Italics, emphasis, and underscoring supplied)

Pursuant to Section 6 of Act No. 3135,<sup>[44]</sup> the application of Section 33, Rule 39 of the Rules of Court has been extended to extra-judicial foreclosure sales, such as the one involved in this case, thus:

Sec. 6. In all cases in which an extrajudicial sale is made under the special power herein before referred to, the debtor, his successors in interest or any judicial creditor or judgment creditor of said debtor, or any person having a lien on the property subsequent to the mortgage or deed of trust under which the property is sold, may redeem the same at any time within the term of one year from and after the date of the sale; and such redemption shall be governed by the **provisions of sections four hundred and sixty-four to four hundred and sixty-six, inclusive, of the Code of Civil Procedure**, in so far as these are not inconsistent with the provisions of this Act. (Emphasis supplied)

Foregoing considered, the court's obligation to issue an *ex parte* writ of possession in favor of the purchaser, in an extra-judicial foreclosure sale, ceases to be ministerial in those exceptional cases where a third party is claiming the property adversely to that of the judgment debtor/mortgagor, and where such third party is a stranger to the foreclosure proceedings wherefrom the *ex parte* writ of possession was applied for. Understandably, the third party adversely possessing the foreclosed property cannot be dispossessed by a mere *ex parte* possessory writ in favor of the purchaser, because to do so would be tantamount to a summary ejectment of the third party in violation of the latter's right to due process.<sup>[45]</sup> Besides, the purchaser's possessory right in an extra-judicial foreclosure of real property is recognized only as against the judgment debtor and his successor-in-interest, but not as against persons whose right of possession is adverse to the latter.<sup>[46]</sup>