

## THIRD DIVISION

[ G.R. No. 228112, September 13, 2017 ]

**SPOUSES ROSALINO R. REYES, JR. AND SYLVIA S. REYES,  
PETITIONERS, VS. SPOUSES HERBERT BUN HONG G. CHUNG AND  
WIENNA T. CHUNG, RESPONDENTS.**

### D E C I S I O N

**VELASCO JR., J.:**

#### **Nature of the Case**

Sought to be set aside in this Petition for Review on *Certiorari*<sup>[1]</sup> is the November 7, 2016 Decision<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. CV No. 102760. The assailed decision dismissed the appeal filed by the petitioners and upheld the September 20, 2013 Decision of the Regional Trial Court of Quezon City, Branch 226 (RTC-Br. 226) in LRC Case No. Q-13-02781, which granted the respondents' "*Ex Parte* Petition for the Issuance of Writ of Possession under Act No. 3135," as well as the January 20, 2014<sup>[3]</sup> and April 28, 2014<sup>[4]</sup> Resolutions of the same court.

#### **Antecedents**

Reviewed, the records yield the following relevant facts:

Petitioners spouses Rosalino Jr. and Sylvia Reyes obtained from Export and Industry Bank, Inc. (EIBI), formerly Urban Bank, Inc., a loan secured by a Deed of Real Estate Mortgage on a 1,202.60 square-meter lot at No. 59 Maranaw St., La Vista, Pansol, Quezon City (subject property). The subject property was registered in petitioners' name under Transfer Certificate of Title (TCT) No. RT-98958 (281043).

When the petitioners defaulted in the payment of their loan obligation, the subject property was extrajudicially foreclosed and sold at public auction, with EIBI as the highest bidder. The corresponding Certificate of Sale was then issued and registered with the Registry of Deeds.<sup>[5]</sup>

After the petitioners' failure to redeem the subject property within the one-year redemption period, the title thereto was consolidated in EIBI's name. The certificate of title in the petitioners' names was accordingly cancelled and a new certificate of title was issued to EIBI. Later, EIBI sold the subject property to LNC (SPV-AMC) Corporation (LNC). Thus, the certificate of title in the name of EIBI was likewise cancelled and a new one in the name of LNC was issued.<sup>[6]</sup>

In turn, by a Deed of Absolute Sale dated May 8, 2012 and a Deed of Assignment dated May 11, 2012, LNC sold and assigned to respondents spouses Herbert Bun Hong and Vienna Chung the subject property. Consequently, LNC's certificate of title

was cancelled, and in lieu thereof, a new title, *i.e.*, TCT No. 004-2012005446, was issued in the respondents' names.

To acquire possession of the subject property, the respondents made several demands<sup>[7]</sup> on the petitioners to vacate the same and surrender its possession. The demands, however, went unheeded. Thus, on August 28, 2012, the respondents lodged a Complaint for Ejectment against the petitioners before the Metropolitan Trial Court (MeTC) of Quezon City, Branch 42, docketed as Civil Case No. 41580.

However, in a Decision dated April 11, 2013, the Complaint for Ejectment was dismissed for insufficiency of evidence. The dismissal was appealed by the respondents to RTC-Quezon City, Branch 223 (RTC-Br. 223).<sup>[8]</sup>

Pending resolution of the appeal, the respondents filed on August 28, 2013 an "*Ex-Parte* Petition for Issuance of Writ of Possession under Act No. 3135" before the RTC-Br. 226, docketed as LRC Case No. Q13-02781. The RTC-Br. 226 found the petition sufficient both in form and in substance, setting it for hearing on September 13, 2012 and directing the respondents to appear and show cause why the petition should be granted.<sup>[9]</sup>

The following day, or on August 29, 2013, the respondents withdrew their appeal before RTC-Br. 223. The trial court allowed the withdrawal per its Order dated September 4, 2013.<sup>[10]</sup>

Thereafter, in its **September 20, 2013 Decision**, RTC-Br. 226 granted the respondents' *Ex-Parte* Petition for Issuance of Writ of Possession. Accordingly, a notice to vacate addressed to the petitioners and a writ of possession directing the sheriff to place the respondents in possession of the subject property were issued on September 24, 2013.

Nonetheless, upon the service of the writ of possession and the notice to vacate on the petitioners, the latter refused to sign them. Several efforts to implement the writ were made thereafter, but all to no avail.<sup>[11]</sup>

Thus, on September 26, 2013, the respondents filed an "*Urgent ExParte* Omnibus Motion" praying for the issuance of a Break Open Order to properly implement the writ of possession and to place them in possession of the subject property.

Conversely, the petitioners filed on October 22, 2013 a "*Verified Urgent Motion to Quash Writ of Possession*" (Motion to Quash) anchored on the following grounds: (1) RTC-Br. 226 has no jurisdiction to issue the writ of possession since the respondents did not purchase the subject property *via* a foreclosure sale under Act No. 3135; and (2) the respondents committed forum shopping.<sup>[12]</sup>

In a **Resolution dated January 20, 2014**, RTC-Br. 226 denied the motions of both parties for lack of merit and sufficient basis. In denying the petitioners' Motion to Quash, RTC-Br. 226 held that the respondents could validly file the "*Ex-Parte* Petition for Issuance of Writ of Possession" as, by their purchase of the subject property, the respondents were deemed to have stepped into the shoes of their predecessors-in-interest and so acquired all the rights of the previous owner/buyer in the foreclosure sale, including the right to ask for the writ of possession.

The trial court also declared that the respondents were not guilty of forum shopping in filing their "*Ex-Parte* Petition for Issuance of Writ of Possession" because an application for writ of possession is a mere incident in the registration proceeding. Though denominated as a "petition," in substance, it is but a mere "motion," so the lower court held.

In the meantime, in refusing to issue a Break Open Order in favor of the respondents, the trial court explained that the motion lacked sufficient basis considering that the petitioners were still occupying the subject property.<sup>[13]</sup>

On February 25, 2014, the respondents, once again, moved for the issuance of a Break Open Order in view of the Sheriffs Report stating that the gate of the subject property was already padlocked as of February 21, 2014. The petitioners, on the other hand, moved for the reconsideration of the January 20, 2014 Resolution and opposed the respondents' second motion praying for the issuance of a Break Open Order.<sup>[14]</sup>

In a **Resolution dated April 28, 2014**, the RTC-Br. 226 denied the petitioners' motion for reconsideration but granted the respondents' "Motion for Issuance of a Break Open Order." In so ruling, the trial court clarified that since the subject property was no longer occupied and its gate was already padlocked when the sheriff attempted to serve the notice to vacate on the petitioners, it is but proper to issue a Break Open Order to properly execute the writ of possession.<sup>[15]</sup>

On May 13, 2014, the writ of possession was finally implemented per the Certificate of Turn-Over of Possession issued by the sheriff.<sup>[16]</sup>

### **The Court of Appeals' Decision**

On appeal to the CA, the appellate court in the now assailed November 7, 2016 Decision sustained the September 20, 2013 Decision and the January 20, 2014 and April 28, 2014 Resolutions of RTC-Br. 226.

In finding for the herein respondents, the CA pronounced that they rightfully availed of the remedy of applying for the issuance of a writ of possession even though they were not the actual purchaser in the foreclosure sale. For such an instance is very well sanctioned by Section 33, Rule 39 of the Rules of Court. By this rule, the remedy of a writ of possession of the mortgagee-purchaser to acquire possession of the foreclosed property from the mortgagor is made available to a subsequent purchaser.

The CA went on to stress that the respondents acquired the absolute right, as purchaser and successors-in-interest of EIBI and LNC, to apply for the issuance of a writ of possession pursuant to Section 7 of Act No. 3135,<sup>[17]</sup> as amended. As the owner of the subject property, the respondents are entitled to its possession as a matter of right. Moreover, the issuance of a writ of possession over the subject property by the court is merely a ministerial function.

The CA similarly upheld the finding that the respondents committed no forum shopping. The appellate court took note of the fact that the respondents withdrew

their appeal of the dismissal of their Complaint for Ejectment lodged with RTC-Br. 223 to avail of the proper legal remedy of filing an application for writ of possession, which was raffled to RTC-Br. 226.<sup>[18]</sup>

Still unfazed, the petitioners elevated the case to this Court advancing substantially the same arguments they broached before the lower courts.

In their Comment,<sup>[19]</sup> the respondents countered that they did not commit forum shopping and were entitled to the Writ of Possession and the Break Open Order issued by RTC-Br. 226.

### **The Issues**

Stripped of non-essentials, the issues for the Court's resolution can be narrowed down to the following: (1) whether the respondents committed forum shopping; and (2) whether the trial court was correct in issuing the Writ of Possession and Break Open Order in the respondents' favour.

### **Our Ruling**

Primarily, the parties' respective positions and arguments are a mere rehash of those presented and already passed upon by the CA. There being no cogent, much less compelling, reason to depart from the findings and conclusions made by the appellate court, the Court denies the petition.

#### ***No forum shopping***

As aptly held by the lower courts, the respondents did not commit forum shopping in filing a Complaint for Ejectment and later an *Ex-Parte* Petition for Issuance of Writ of Possession.

It has been jurisprudentially established that forum shopping exists when a party avails himself of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in or already resolved adversely by some other courts.

The test to determine whether a party violated the rule against forum shopping is whether the elements of *litis pendentia* are present, or whether a final judgment in one case will amount to *res judicata* in another. Simply put, when *litis pendentia* or *res judicata* does not exist, neither can forum shopping exist.

The requisites of *litis pendentia* are: (a) the identity of parties, or at least such as representing the same interests in both actions; (b) the identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other. On the other hand, the elements of *res judicata*, also known as bar by prior judgment, are: (a) the former judgment must be final; (b) the court which rendered it had jurisdiction over the subject matter and the parties; (c) it must be a judgment on the merits; and (d) there must be, between the first and second actions, identity of parties, subject matter, and causes

of action.<sup>[20]</sup>

In the case at bench, even granting that the MeTC ruling had attained finality, still, such will not amount to *res judicata* in the subsequent *Ex-Parte* Petition for Issuance of Writ of Possession, there being no identity or similarity of action between the two proceedings with the latter being just an incident in the transfer of title.<sup>[21]</sup>

In the same way, there is no forum shopping based on *litis pendentia*. In this we quote the pronouncements of the CA, thus:

x x x x In the present case, one (1) day after the filing of the *Ex-Parte Petition for Issuance of Writ of Possession* on August 28, 2013, [herein respondents] **already moved for the withdrawal of their appeal** with [RTC-Quezon City], Branch 223 assailing the April 11, 2013 Decision in their Ejectment case of the MeTC. [Respondents] were still within their rights in availing themselves of the proper remedy, *i.e.*, to file the *Ex-Parte Petition* having realized their erroneous resort to the wrong remedy. Furthermore, forum shopping presupposes the availment of two or more simultaneous remedies, not to successive ones arising out of an error that may have been committed in good faith. Raising a matter to the correct forum employing the wrong mode or remedy, and then later resorting to the correct one, does not make an instance of forum shopping. **The remedies of appeal and *Ex-Parte Petition for Issuance of Writ of Possession* are mutually exclusive and not alternative or successive.**<sup>[22]</sup> (Emphases supplied.)

Since neither *litis pendentia* nor *res judicata* exists in the present case, respondents may not be held liable for forum shopping.

### **The remedy of a writ of possession is available to a subsequent purchaser but only after hearing**

This Court also upholds the respondents' right to a writ of possession even though they were not the purchasers in the foreclosure proceedings.

A writ of possession is a writ of execution employed to enforce a judgment to recover the possession of land. It commands the sheriff to enter the land and give its possession to the person entitled under the judgment.<sup>[23]</sup> It may be issued under the following instances: (1) in land registration proceedings under Section 17 of Act 496; (2) in a judicial foreclosure, provided the debtor is in possession of the mortgaged realty and no third person, not a party to the foreclosure suit, had intervened; (3) **in an extrajudicial foreclosure of a real estate mortgage under Section 7 of Act No. 3135, as amended; and (4) in execution sales (last paragraph of Section 33, Rule 39 of the Rules of Court).**<sup>[24]</sup>

In an extrajudicial foreclosure of real property, the purchaser becomes the absolute owner thereof if no redemption is made within one year from the registration of the certificate of sale by those entitled to redeem. Being the absolute owner, he is entitled to all the rights of ownership over a property recognized in Article 428<sup>[25]</sup> of the New Civil Code, not the least of which is possession, or *jus possidendi*.