

THIRD DIVISION

[G.R. No. 203949, April 06, 2016]

**SPOUSES GEORGE A. GALLENT, SR. AND MERCEDES M. GALLENT,
PETITIONERS, VS. JUAN G. VELASQUEZ, RESPONDENT.**

[G.R. No. 205071]

**JUAN G. VELASQUEZ, PETITIONER, VS. SPOUSES GEORGE A.
GALLENT, SR. AND MERCEDES M. GALLENT, RESPONDENTS.**

DECISION

REYES, J.:

Before this Court are two conflicting decisions rendered by two different divisions of the Court of Appeals (CA) on the same question of whether the Regional Trial Court (RTC) may validly issue an *ex parte* writ of possession to the transferee of the winning bidder at the extrajudicial foreclosure sale of mortgaged real property.

Antecedent Facts

George A. Gallent, Sr. (George) was the registered owner of a 761-square-meter residential property covered by Transfer Certificate of Title (TCT) No. S-99286,^[1] located at No. 3, Angeles Street, Alabang Hills Village, Muntinlupa City, with improvements thereon consisting of a two-storey house and a swimming pool. On December 20, 1996, the Spouses George and Mercedes Gallent (Spouses Gallent) mortgaged the said property to Allied Banking Corporation (Allied Bank) as security for a loan of P1.5 Million. The Spouses Gallent failed to pay their loan, which had ballooned to P4,631,974.66; thus, Allied Bank extrajudicially foreclosed the mortgaged property. At the public auction, Allied Bank emerged as the highest bidder and was issued a corresponding certificate of sale^[2] dated September 25, 2000. Since the Spouses Gallent failed to redeem the subject property after one year, Allied Bank consolidated its ownership over the subject property. Accordingly, TCT No. S-99286 was cancelled and replaced with TCT No. 8460^[3] in the name of Allied Bank.^[4]

On June 11, 2003, Allied Bank agreed to sell back the foreclosed property to the Spouses Gallent for P4 Million, as evidenced by an Agreement to Sell,^[5] wherein the Spouses Gallent paid a down payment of P3.5 Million, evidenced by an Official Receipt (O.R.) No. 0990687-A^[6] dated March 12, 2003, and the balance thereof was payable in 12 monthly amortizations. It was also stipulated that the Spouses Gallent would be allowed to keep the possession of the subject property as tenants or lessees of Allied Bank.^[7]

Due to financial difficulties, sometime in October 2003, the Spouses Gallent sought

the help of their close family friend, Juan Velasquez (Velasquez), to help them settle their remaining monthly amortizations. As an inducement, they agreed that Velasquez would have the subject property registered under his name until they have repaid him.^[8]

On October 24, 2003, the Spouses Gallent executed a Deed of Assignment of Rights^[9] whereby they assigned to Velasquez all their rights, interests, and obligations under their Agreement to Sell with Allied Bank. Velasquez paid Allied Bank the remaining balance amounting to P216,635.97, evidenced by O.R. No. 0006352.^[10]

On November 5, 2003, Allied Bank and Velasquez executed a Deed of Absolute Sale^[11] over the subject property for the price of P4 Million, wherein George himself signed as an instrumental witness.^[12] However, the said instrument was not registered. Subsequently, Velasquez caused another Deed of Sale^[13] dated November 19, 2003, over the subject property which showed a lower selling price of P1.2 Million to be registered, purportedly for tax purposes.

On November 28, 2003, TCT No. 11814^[14] was issued under the name of Velasquez to replace TCT No. 8460.

After more than four years, or on June 27, 2008, Velasquez sent a demand letter^[15] to the Spouses Gallent to vacate the subject property, but the latter refused to do so. On July 6, 2009, Velasquez filed an *ex parte* petition for issuance of a writ of possession, docketed as LRC Case No. 09-055, in the RTC of Muntinlupa City.^[16] The Spouses Gallent sought to dismiss the petition by filing Consolidated Motions for Leave to Intervene and to Dismiss Petition^[17] on January 14, 2010.

On February 12, 2010, the RTC of Muntinlupa City, Branch 256, issued an Order^[18] denying the Spouses Gallent's consolidated motions, *viz*:

The issuance of the writ of possession is a ministerial duty of the court upon filing of the proper application and proof of title and by its nature does not require notice upon persons interested in the subject properties. By virtue of the sale of the properties involved, [Velasquez] became the new owner of the lots entitled to all rights and interests its predecessor [Allied Bank] had therein, including the right to file an application for writ of possession. The court therefore finds the petition to be sufficient in form and substance.

As to the motion for leave to intervene filed by [Spouses Gallent], the same will be treated by this court as their opposition to the petition and they will be considered an oppositor.

Wherefore premises considered, the motions are hereby denied for lack of merit.

x x x x

SO ORDERED.^[19] (Emphasis ours)

The Spouses Gallent filed a motion for reconsideration but it was denied by the RTC in an Order^[20] dated April 13, 2010, reasoning as follows:

The instant motion deserves a scant consideration considering that the issues and arguments raised by the oppositors are mere rehashed which were already passed upon by this court in the order sought to be reconsidered. To reiterate, it is a ministerial duty on the part of this court to act on cases of this nature, particularly if the twelve-month period for redemption had already lapsed. Should the oppositors intend to recover title over the subject property, the same should be ventilated in a separate proceeding and proceed independently of this petition.

Wherefore premises considered, the motion for reconsideration is hereby denied for lack of merit. Accordingly, the reception of *ex parte* evidence is hereby assigned to the Branch Clerk of Court to act as Commissioner and to make a report to this Court ten (10) days upon completion thereof.

x x x x

SO ORDERED.^[21]

On July 2, 2010, the Spouses Gallent filed a petition for *certiorari*^[22] before the CA, docketed as **CA-G.R. SP No. 114527**, raffled to the Special 4th Division, seeking to annul the RTC Orders dated February 12, 2010 and April 13, 2010. Invoking *Mendoza v. Salinas*,^[23] the Spouses Gallent argued that: (1) the RTC has no jurisdiction to issue an *ex parte* writ of possession to Velasquez since he did not acquire the property at a foreclosure sale, but purchased the same from the mortgagee, winning bidder and purchaser, Allied Bank, and only after it had consolidated its title thereto;^[24] (2) in their Agreement to Sell, Allied Bank and the Spouses Gallent entered into new contractual relations as vendees-lessees and vendor-lessor, and ceased to be mortgagors and mortgagee;^[25] (3) Velasquez should have filed an action for ejectment or for recovery of ownership or possession, not an *ex parte* petition for writ of possession;^[26] and (4) the RTC's duty to issue the writ has ceased to be ministerial in view of the Spouses Gallent's adverse claim upon the property based on their substantial payment of its purchase price, in addition to the fact that Velasquez and Allied Bank executed a forged deed of sale.^[27]

Meanwhile, on July 7, 2010, the RTC rendered its Decision^[28] in LRC Case No. 09-055, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing and considering that it is a ministerial duty of the court to issue writ of possession, the redemption period having been expired without the subject property being redeemed by the mortgagors, the petition is hereby granted. Accordingly, let a writ of possession be issued in favor of [Velasquez] and against the oppositors and all persons claiming rights under them, to place [Velasquez] in possession of the subject property and for the oppositors and all persons claiming rights under them to vacate the land covered by TCT No. 11814 of the Register of Deeds of Muntinlupa City.

SO ORDERED.^[29]

On September 24, 2010, the Spouses Gallent filed another petition for *certiorari*^[30] before the CA, docketed as **CA-G.R. SP No. 116097** and raffled to the 10th Division, arguing that the deed of sale between Velasquez and Allied Bank was a forgery. In their certification of non-forum shopping,^[31] they mentioned the pendency of **CA-G.R. SP No. 114527** in the CA. Surprisingly, neither of the parties nor the CA 10th Division moved for the consolidation of CA-G.R. SP No. 116097 with CA-G.R. SP No. 114527.

Meanwhile, on October 21, 2010, the Spouses Gallent also filed before the RTC of Muntinlupa City a complaint for "Reformation of Instruments, Consignation, Annulment of TCT No. 11814 of the Registry of Deeds for the City of Muntinlupa and Damages With Application for Immediate Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction," docketed as Civil **Case No. 10-102**. In this action, the Spouses Gallent sought to annul the deed of assignment they executed in favor of Velasquez allegedly because their true intent was an equitable mortgage. They thus prayed to declare void the sale between Velasquez and Allied Bank on account of forgery, to order the judicial consignment of the amount of P216,635.97 to settle their "loan" from Velasquez, and to enjoin him from taking possession of the property.^[32]

Rulings of the CA

CA-G.R. SP No. 116097

The CA 10th Division rendered its Decision^[33] on May 23, 2012 finding that since Allied Bank, the mortgagee-purchaser at the extrajudicial foreclosure sale, is entitled to an *ex parte* writ of possession after the title to the mortgaged property had been consolidated in its name, Velasquez, as the bank's transferee of the said property may also petition the court for an *ex parte* writ of possession since he merely stepped into the shoes of Allied Bank. The 10th Division also ruled that the Spouses Gallent can no longer be considered to hold an interest in the property adverse to Allied Bank or Velasquez after they assigned their entire interest therein to Velasquez. Having no more claims on the title of either Allied Bank or Velasquez, an *ex parte* writ of possession may issue against them.

On October 12, 2012, the CA 10th Division denied the Spouses Gallent's motion for reconsideration.^[34] On December 6, 2012, they filed a Petition for Review on *Certiorari*^[35] before this Court docketed as **G.R. No. 203949**.

CA-G.R. SP No. 114527

The CA Special 4th Division issued its Decision^[36] dated August 28, 2012, finding that an *ex parte* writ of possession cannot issue against the Spouses Gallent since they are adverse claimants of the property who are in actual possession. The CA relied on Mendoza,^[37] where the Court ruled that an *ex parte* writ of possession may be issued as a ministerial duty of the court only in three instances: (a) in a land

registration case, as provided under Section 17 of Act No. 496; (b) in a judicial foreclosure of real estate mortgage; or (c) in an extrajudicial foreclosure of real estate mortgage under Section 7 of Act No. 3135,^[38] as amended.^[39] According to the CA, since Velasquez did not acquire his title to the property in a foreclosure sale, but bought the same directly from Allied Bank after title had been consolidated in the said bank, he must first bring an ejectment suit or an *accion reivindicatoria* against the Spouses Gallent in order for him to obtain possession thereof.^[40]

According to *Mendoza*, an *ex parte* writ of possession ceases to issue as a ministerial duty of the court when sought against a party who has remained in the property upon an adverse claim of ownership, viz:

Based on these tenets, the issuance of a writ of possession, therefore, is clearly a ministerial duty of the land registration court. **Such ministerial duty, however, ceases to be so with particular regard to petitioners who are actual possessors of the property under a claim of ownership.** Actual possession under claim of ownership raises a disputable presumption of ownership. This conclusion is supported by Article 433 of the Civil Code, which provides:

Actual possession under claim of ownership raises a disputable presumption of ownership. The true owner must resort to judicial process for the recovery of the property.

Under said provision, one who claims to be the owner of a property possessed by another must bring the appropriate judicial action for its physical recovery. The term "judicial process" could mean no less than an ejectment suit or reivindicatory action, in which the ownership claims of the contending parties may be properly heard and adjudicated.^[41] (Citation omitted and emphasis ours)

Velasquez filed a motion for reconsideration, but it was denied;^[42] hence, he filed a Petition for Review on *Certiorari*^[43] before this Court docketed as **G.R. No. 205071**.

Ruling of the Court

The Court grants the petition of the Spouses Gallent, but denies the petition of Velasquez.

The general rule in extrajudicial foreclosure of mortgage is that after the consolidation of the title over the foreclosed property in the buyer, it is the ministerial duty of the court to issue a writ of possession upon an *ex parte* petition^[44] by the new owner as a matter of right.

It is well-settled that the purchaser in an extrajudicial foreclosure of real property becomes the *absolute* owner of the property if no redemption is made within one year from the registration of the certificate of sale by those entitled to redeem.^[45] As absolute owner, he is entitled to all the rights of ownership over a property recognized in Article 428 of the New Civil Code, not least of which is possession, or *jus possidendi*:^[46]