

## THIRD DIVISION

[ G.R. No.195445, December 07, 2016 ]

**ANGELINA DE GUZMAN, GILBERT DE GUZMAN, VIRGILIO DE GUZMAN, JR., AND ANTHONY DE GUZMAN, PETITIONERS, V. GLORIA A. CHICO, RESPONDENT.**

### DECISION

**JARDELEZA, J.:**

Before us is a petition for review<sup>[1]</sup> under Rule 45 of the Rules of Court. Petitioners seek the review of the January 31, 2011 Decision<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 114103 for being contrary to law and jurisprudence. The CA affirmed the Order<sup>[3]</sup> of the Regional Trial Court (RTC), Branch 59, Makati City in LRC Case No. M-5188 dated January 19, 2010 which denied the petitioners' Urgent Motion to Cite Petitioner in Contempt and to Nullify Proceedings, and the Order<sup>[4]</sup> of the RTC dated April 19, 2010 which denied petitioners' Motion for Reconsideration.

#### The Facts

The subject of this case is a property situated at 7-A 32 A. Bonifacio Street, Bangkal, Makati City, previously registered under the name of petitioners, and covered by Transfer Certificate of Title (TCT) No. 164900.<sup>[5]</sup>

On May 24, 2006, the property was sold at a public auction of tax delinquent properties conducted by the City Government of Makati City pursuant to Sections 254 to 260 of the Local Government Code. Respondent was the winning bidder at the public auction, and the City Government of Makati executed a Certificate of Sale in her favor on even date.<sup>[6]</sup>

Petitioners failed to redeem the property within the one-year period. Thus, on July 12, 2007, respondent filed with the RTC of Makati City an application for new certificate of title under Section 75<sup>[7]</sup> in relation to Section 107<sup>[8]</sup> of Presidential Decree (PD) No. 1529 or the Property Registration Decree (LRC Case No. M-4992).<sup>[9]</sup> On December 28, 2007, after hearing, the RTC ordered that the title over the property be consolidated and transferred in the name of respondent. The Register of Deeds of Makati consequently cancelled TCT No. 164900 and issued a new one, TCT No. T-224923, in favor of respondent.<sup>[10]</sup> Afterwards, in the same court, respondent moved for the issuance of a writ of possession. The motion was, however, denied by the court for failure to set the motion for hearing.<sup>[11]</sup>

On January 14, 2009, respondent, once again, filed (for the same property), an *Ex Parte* Petition for the Issuance of a Writ of Possession<sup>[12]</sup> (LRC Case No. M-5188) with the RTC of Makati City. This *ex parte* petition was raffled to Branch 59 (court *a quo*).<sup>[13]</sup>

On April 1, 2009, the court *a quo* issued an Order<sup>[14]</sup> granting respondent's *ex parte* petition and ordered the issuance of a writ of possession in her favor. The writ was subsequently issued on August 7, 2009.<sup>[15]</sup>

On August 28, 2009, petitioners filed an urgent motion to cite respondent in contempt, and to nullify the proceedings on the ground that LRC Case No. M-5188 contained a defective/false verification/certification of non-forum shopping.<sup>[16]</sup>

On September 11, 2009, respondent filed her comment/opposition. She alleged that petitioner's objection to the certification against forum shopping was deemed waived for failure to timely object thereto. She also claimed that forum shopping does not exist.<sup>[17]</sup>

On January 19, 2010, the court *a quo* issued an Order<sup>[18]</sup> denying petitioners' motion. It ruled that the *ex parte* petition for the issuance of a writ of possession filed by respondent in LRC Case No. M-5188, although denominated as a petition, is not an initiatory pleading, and, thus, does not require a certificate of non-forum shopping. Thus, in the same Order, the court *a quo* ruled that petitioners' motion to present respondent and her counsel as witnesses is without merit.<sup>[19]</sup> Petitioner filed a motion for reconsideration, but it was denied in an Order<sup>[20]</sup> dated April 19, 2010.

Aggrieved, petitioners filed a special civil action for *certiorari* before the CA to annul the January 19, 2010 and April 19, 2010 Orders of the court *a quo*. They averred that it acted with grave abuse of discretion in issuing the assailed orders.<sup>[21]</sup> Petitioners further alleged that the tax auction sale proceeding is governed by Sections 246 to 270 of the Local Government Code, and not by Act No. 3135<sup>[22]</sup> as relied upon by respondent.<sup>[23]</sup>

On January 31, 2011, the CA rendered a Decision dismissing the petition and affirming the challenged Orders of the court *a quo*, to wit:

**WHEREFORE**, the instant petition is DISMISSED for lack of merit. The challenged *orders* dated January 19, 2010 and April 19, 2010 are hereby **AFFIRMED**.<sup>[24]</sup>

The CA ruled that there is no forum shopping. Prior to the filing of the *ex parte* petition in LRC Case No. M-5188, RTC Branch 62 has already denied respondent's motion for issuance of a writ of possession in LRC Case No. M-4992. The CA added that there can be no forum shopping because the issuance of a writ of possession is a ministerial function and is summary in nature, thus, it cannot be said to be a judgment on the merits but simply an incident in the transfer of title.<sup>[25]</sup>

The CA also said that a certificate of non-forum shopping is required only in complaints or other initiatory pleadings. A petition or motion for issuance of a writ of possession is not a complaint or initiatory pleading which requires a verification and certificate of non-forum shopping.<sup>[26]</sup>

Lastly, the CA rejected petitioners' argument that the tax auction sale proceeding is governed by Sections 246 to 270 of the Local Government Code, and not by Act No. 3135. It explained that the issue was raised by petitioners for the first time on appeal, and the decision finding the respondent as the lawful and registered owner

of the property by virtue of the public auction has long become final and executory and beyond the ambit of judicial review.<sup>[27]</sup>

Petitioners appealed the Decision of the CA to this Court by way of a petition for review on *certiorari*.

### **Petitioners' Arguments**

Petitioners aver that the CA committed reversible error in:

- (a) Ruling that because of Section 7 of Act No. 3135, a certification of non-forum shopping was unnecessary in the *ex parte* petition, and thus it was unnecessary to examine respondent Chico and her counsel on said certification; and
- (b) Not ruling conformably with Article 433 of the Civil Code and the cases of *Factor v. Martel, Jr.*,<sup>[28]</sup> *Serra Serra v. Court of Appeals*,<sup>[29]</sup> and *Maglente v. Baltazar-Padilla*<sup>[30]</sup> that:
  - (i) The certification of non-forum shopping was required in the *ex-parte* petition;
  - (ii) All proceedings in LRC Case No. M-5188 should have been in the nature of an *accion reivindicatoria*; and
  - (iii) Consequently, said proceedings were void, being summary and in the nature of proceedings for an *ex parte* motion.<sup>[31]</sup>

### **Respondent's Arguments**

In her Comment,<sup>[32]</sup> respondent insists that a certification of non-forum shopping is not necessary in this case because an *ex parte* petition for the issuance of a writ of possession is not an action, complaint, or an initiatory pleading. She avers that although denominated as a petition, the *ex parte* petition is actually in the nature of a motion, whose office is not to initiate new litigation, but to bring a material but incidental matter arising in the progress of the case, in this case, the registration proceedings.<sup>[33]</sup> Respondent also denies committing forum shopping, and instead posits that it is petitioners who are guilty of forum shopping. Respondent notes that in this petition, petitioners' arguments center on the alleged nullity of the writ of possession itself which is likewise subject of another petition before the Court of Appeals docketed as CA-G.R SP No. 110654.<sup>[34]</sup>

Respondent likewise argues that Article 433 of the New Civil Code has no application to a buyer of property in a tax delinquency sale. Respondent contends that the cases petitioner cited do not involve actions pertaining to tax delinquency sales, and that they could not, in fact, identify a particular provision of law or jurisprudence saying that a buyer in a tax delinquency sale has to file an independent action to be able to take possession of the property he bought in a tax delinquency sale.<sup>[35]</sup>

### **The Court's Ruling**

We deny the petition.

*No certificate against forum shopping is required in a petition or motion for issuance of a writ of possession.*

We affirm the ruling of the CA that a certificate against forum shopping is not a requirement in an *ex parte* petition for the issuance of a writ of possession. An *ex parte* petition for the issuance of writ of possession is not a complaint or other initiatory pleading as contemplated in Section 5,<sup>[36]</sup> Rule 7 of the 1997 Rules of Civil Procedure.<sup>[37]</sup>

The non-initiatory nature of an *ex parte* motion or petition for the issuance of a writ of possession is best explained in *Arquiza v. Court of Appeals*.<sup>[38]</sup> In that case we ruled that the *ex parte* petition for the issuance of a writ of possession filed by the respondent is not an initiatory pleading. Although the private respondent denominated its pleading as a petition, it is, nonetheless, a motion. What distinguishes a motion from a petition or other pleading is not its form or the title given by the party executing it, but rather its purpose.<sup>[39]</sup> A petition for the issuance of a writ of possession does not aim to initiate new litigation, but rather issues as an incident or consequence of the original registration or cadastral proceedings. As such, the requirement for a forum shopping certification is dispelled.<sup>[40]</sup>

We also cannot subscribe to petitioners' narrow view that only cases covered by foreclosure sales under Act No. 3135 are excused from the requirement of a certificate against forum shopping.

Based on jurisprudence, a writ of possession may be issued in the following instances: (a) land registration proceedings under Section 17 of Act No. 496, otherwise known as The Land Registration Act; (b) 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; (c) extrajudicial foreclosure of a real estate mortgage under Section 7 of Act No. 3135, as amended by Act No. 4118; and (d) in execution sales.<sup>[41]</sup>

We note that there is no law or jurisprudence which provides that the petition for the issuance of a writ of possession depends on the nature of the proceeding in which it is filed. Thus, we find no logical reason for petitioners' contention that only cases covered by Act No. 3135 are exempt from the requirement of a certificate against forum shopping. As explained in the previous paragraphs, by its very nature, a writ of possession is a mere incident in the transfer of title. It is an incident of ownership, and not a separate judgment. It would thus be absurd to require that a petition for the issuance of this writ to be accompanied by a certification against forum shopping.

*The issuance of a writ of possession is warranted.*

Petitioners cite the rulings in *Factor v. Martel, Jr.*, *Serra Serra v. Court of Appeals*, and *Maglente v. Baltazar-Padilla* to justify their position that respondent availed of the wrong remedy when she filed an *ex parte* petition for issuance of a writ of

possession. Petitioners contend that this is a departure from the proper procedure which required the filing of an appropriate case for *accion reivindicatoria*.

Respondent, on the other hand, argues that the cases petitioner cited do not involve actions pertaining to tax delinquency sales. Respondent adds that petitioners could not, in fact, identify a particular provision of law or jurisprudence saying that a buyer in a tax delinquency sale has to file an independent action to be able to take possession of the property he brought in a tax delinquency sale.

We agree with respondent.

*Factor* involves the issuance of a writ of possession pursuant to an original action for registration; *Serra Serra* involves a petition for reconstitution; while *Maglente* involves an action for interpleader. These rulings cannot apply in this case. For one, none of them contemplate the present situation where the action is between, on the one hand, the previous registered owner of the parcel of land; and on the other, the buyer in a tax delinquency sale. Second, none of these cases involves the right of a purchaser in a tax delinquency sale for the issuance of a writ of possession after the redemption period.

Contrary therefore, to petitioners' contentions, the CA did not err in upholding the writ of possession in this case. In *St. Raphael Montessori School, Inc. v. Bank of the Philippine Islands*,<sup>[42]</sup> an action involving the application of Act No. 3135, this Court recognized that the writ of possession was warranted not merely on the basis of the law, but ultimately on the right to possess as an incident of ownership. The right to possess a property merely follows the right of ownership, and it would be illogical to hold that a person having ownership of a parcel of land is barred from seeking possession.<sup>[43]</sup> Precisely, the basis for the grant of the writ of possession in this case is respondent's ownership of the property by virtue of a tax delinquency sale in her favor, and by virtue of her absolute right of ownership arising from the expiration of the period within which to redeem the property.<sup>[44]</sup>

In *Cloma v. Court of Appeals*,<sup>[45]</sup> the City of Pasay sold the property of Spouses Cloma at public auction for tax delinquency. Private respondent Nocom was declared the winning bidder of the sale, for which he was issued a certificate of sale. The spouses failed to redeem the property within the prescribed period, and a final deed of sale was issued in favor of Nocom. Thus, Nocom filed a petition invoking Section 75 of PD No. 1529 (as in this case),<sup>[46]</sup> which was granted. Accordingly, Nocom applied for a writ of possession over the property, and was eventually granted by the trial court. The spouses argued that the trial court cannot issue the writ of possession. This Court rejected this argument, citing Section 2 of PD No. 1529. This Court said:

Section 2 of PD 1529 also clearly rejects the thesis of petitioners that the trial court cannot issue a writ of possession to effectuate the result of a tax sale, thus:

"Sec 2. Nature of registration of proceedings; jurisdiction of courts. — x x x Courts of First Instance shall have exclusive jurisdiction over all applications for original registration of title, to land, including improvements and interests therein, and over all petitions filed after original registration of title, with power to hear and determine all questions arising upon