

FIRST DIVISION

[G.R. No. 211649, August 12, 2015]

**AQA GLOBAL CONSTRUCTION, INC., PETITIONER, VS. PLANTERS
DEVELOPMENT BANK, RESPONDENT.**

[G.R. No. 211742]

**JE-AN SUPREME BUILDERS AND SALES CORPORATION,
PETITIONER, VS. PLANTERS DEVELOPMENT BANK,
RESPONDENT.**

D E C I S I O N

PERLAS-BERNABE, J.:

Assailed in these consolidated petitions for review on *certiorari*^[1] are the Decision^[2] dated July 18, 2013 and the Resolution^[3] dated March 10, 2014 of the Court of Appeals (CA) in CA-G.R. SP No. 127219, which set aside the Orders dated July 16, 2012^[4] and September 25, 2012^[5] issued by the Regional Trial Court of Pasig City, Branch 160 (RTC) in LRC Case No. R-7509, excluding the petitioners in these cases from the implementation of the writ of possession in favor of respondent Planters Development Bank (Plantersbank).

The Facts

Plantersbank was the mortgagee of nineteen (19) parcels of land situated in San Juan, Metro Manila (subject properties), covered by Transfer Certificates of Title (TCT) Nos. 11057-R to 11075-R, under a Mortgage^[6] dated February 28, 2003 executed by the borrower-mortgagor, Kwong-on Trading Corporation (KTC), to secure a P14,000,000.00 loan. KTC defaulted in the payment of its loan, constraining Plantersbank to extra judicially foreclose the mortgaged properties^[7] and, in the process, emerged as the highest bidder in the public auction sale held on May 5, 2010.^[8] KTC likewise failed to redeem the subject properties, which led to the cancellation of TCT Nos. 11057-R to 11075-R,^[9] and the issuance of TCT Nos. 012-2011000149 to 012-2011000167^[10] in the name of Plantersbank. Thereafter, Plantersbank applied for a writ of possession, which was granted by the RTC in a Decision^[11] dated January 6, 2012 (January 6, 2012 Decision). The corresponding writ of possession was issued on February 2, 2012 and served, together with the Notice to Vacate^[12] and the January 6, 2012 Decision, to petitioner AQA Global Construction Inc. (AQA), which occupied the subject properties at the time.^[13]

AQA filed a Manifestation and Motion^[14] before the RTC, seeking leave of court to intervene in the case and to be excluded from the implementation of the writ of possession, claiming that its possession: (a) was adverse to that of KTC; and (b)

stemmed from a ten (10) year contract of lease^[15] commencing on March 10, 2009, with petitioner Je-an Supreme Builders and Sales Corporation (Je-An), which had bought the subject property from Little Giant Realty Corporation (Little Giant), the registered owner of the subject properties.

On the other hand, Je-An filed an Affidavit of Third Party Claim^[16] to stay the implementation of the writ of possession, alleging that its right to possess the subject properties was: (a) separate and distinct from that of KTC;^[17] and (b) derived from a Contract to Sell^[18] dated January 15, 2003 (January 15, 2003 Contract to Sell) executed by Little Giant.

Plantersbank opposed^[19] AQA's motion, contending that AQA cannot be considered a third party possessing the subject properties adversely against KTC because the latter derived its right from Je-An through a Deed of Assignment^[20] of the subject properties dated February 24, 2003 (February 24, 2003 Deed of Assignment) executed by its representative, Antonio Q. Achurra, Jr. (Achurra). Plantersbank further averred that the lease between Je-An and AQA cannot bind it since the same was not registered and annotated on the titles over the subject properties.^[21]

AQA filed its Reply,^[22] maintaining that its right to possess the subject properties did not come from KTC but from Je-An. It further averred that KTC has no right over the subject properties considering the subsequent rescission^[23] of the February 24, 2003 Deed of Assignment by Little Giant and KTC.

The RTC Ruling

After hearing AQA's motion, the RTC issued an Order^[24] dated July 16, 2012 excluding AQA and Je-An from the implementation of the writ of possession in favor of Plantersbank, ruling that they are third parties which did not derive title from KTC. It held that Plantersbank's proper recourse is to file a separate action questioning their possession.

Dissatisfied, Plantersbank moved for reconsideration^[25] which was, however, denied in an Order^[26] dated September 25, 2012. It then elevated the matter to the CA through a petition for *certiorari*^[27] under Rule 65 of the Rules of Court (Rules).

The CA Ruling

In a Decision^[28] dated July 18, 2013, the CA ruled that the RTC gravely abused its discretion in staying the implementation of the writ of possession against AQA and Je-An. It held that when a writ of possession had already been issued, the adverse third party seeking to vindicate its claim of ownership and/or possession over the foreclosed properties may avail of the cumulative remedies of: (a) *terceria* to determine whether the sheriff has rightly or wrongly taken hold of the property not belonging to the judgment debtor or obligor; and (b) an independent separate action.^[29] The CA further held that third parties cannot intervene in an *ex parte* petition for the issuance of a writ of possession.^[30]

Undaunted, AQA and Je-An separately moved for reconsideration^[31] which were, however, denied in a Resolution^[32] dated March 10, 2014; hence, the instant petitions.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not the CA erred in finding that the RTC gravely abused its discretion in staying the implementation of the writ of possession against AQA and Je-An.

The Court's Ruling

The petition lacks merit.

A writ of possession is an order by which the sheriff is commanded to place a person in possession of a real or personal property. It may be issued under any of the following instances:^[33] (a) land registration proceedings under Section 17 of Act No. 496,^[34] otherwise known as the "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; and (c) extrajudicial foreclosure of a real estate mortgage under Section 7 of Act No. 3135,^[35] as amended by Act No. 4118.^[36]

The **general rule** is that after the lapse of the redemption period, the purchaser in a foreclosure sale becomes the absolute owner of the property purchased who is entitled to the possession of the said property. Upon ex parte petition, it is ministerial upon the trial court to issue the writ of possession in his favor. The **exception**, however, is provided under Section 33, Rule 39 of the Rules,^[37] which applies suppletorily to extrajudicial foreclosures of real estate mortgages. Under the said provision of law, the possession of the mortgaged property may be awarded to a purchaser in the extrajudicial foreclosure unless a third party is actually holding the property adversely to the judgment debtor.^[38]

SEC. 33. Deed and possession to be given at expiration of redemption period; by whom executed or given. - If no redemption be made within one (1) year from the date of the registration of the certificate of sale, the purchaser is entitled to a conveyance and possession of the property; or, if so redeemed whenever sixty (60) days have elapsed and no other redemption has been made, and notice thereof given, and the time for redemption has expired, the last redemptioner is entitled to the conveyance and possession; but in all cases the judgment obligor shall have the entire period of one (I) year from the date of the registration of the sale to redeem the property. The deed shall be executed by the officer making the sale or by his successor in office, and in the latter case shall have the same validity as though the officer making the sale had continued in office and executed it.

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. (Emphasis supplied)

Thus, where a parcel of land levied upon on execution is occupied by a party other than a judgment debtor, the procedure is for the court to order a hearing to determine the nature of said adverse possession.^[39] For the exception to apply, however, the property need not only be possessed by a third party, but also held by him adversely to the judgment obligor - such as that of a co-owner, agricultural tenant or usufructuary, who **possess the property in their own right** and ***not*** merely the successor or transferee of the right of possession of,^[40] or privy to,^[41] the judgment obligor.

In this case, petitioners' claim of right of possession over the subject properties is not analogous to any of the foregoing as to render such possession adverse to the judgment obligor, KTC, under legal contemplation.

In the first place, Je-An's claimed ownership over the subject properties is based on the January 15, 2003 Contract to Sell,^[42] which is legally insufficient to transfer title in its favor absent a deed of conveyance duly executed by the vendor, Little Giant, and, at most, affords it a mere ***inchoate right*** over the said properties.^[43]

Secondly, while records show that KTC acquired its rights and interests over the subject properties from Little Giant through the February 24, 2003 Deed of Assignment,^[44] Je-An, the vendee under the January 15, 2003 Contract to Sell of the same properties, was ***privy*** to the conveyance to KTC since its representative, *i.e.*, Achurra, was the one who executed the said deed of assignment in favor of KTC in behalf of Little Giant. Such is apparent from the "Brief Statement of Claims and Defenses"^[45] in the pre-trial^[46] brief dated September 10, 2010 filed by Je-An and Achurra in Civil Case Nos. 69973 and 69988 before the same RTC - *i.e.*, the consolidated cases for: (a) annulment of contract to sell and deed of assignment, cancellation of titles, annulment of mortgage, accounting and damages, filed by Diokno as representative of Little Giant and for his own behalf against Je-An and Achurra; and (b) specific performance and damages filed by Je-An, represented by Achurra, against Diokno - and is inconsistent with Je-An's claim of adverse possession against KTC in this case.

Thirdly, it appears that at the time KTC executed the Mortgage^[47] in favor of Plantersbank on February 28, 2003, titles over the subject properties were already in its name sans any annotation of the January 15, 2003 Contract to Sell in favor of Je-An. Moreover, the records are bereft of showing that at the time Plantersbank consolidated its title over the foreclosed properties in 2011, any adverse claim^[48] based on said contract to sell and/or the purported rescission^[49] on August 1, 2003 of the February 24, 2003 Deed of Assignment between Little Giant (as represented by Achurra) and KTC had been registered by Je-An, Achurra or Little Giant on KTC's titles.

Clearly, the stay of the implementation of the writ of possession prayed for by Je-An on the basis of such inchoate right would becloud the integrity and derogate the indefeasibility of the torrens title^[50] issued in favor of Plantersbank as a confirmed

owner, which the Court cannot allow. Corollarily, the enforcement of the writ of possession cannot also be stayed in favor of AQA which merely derived its possession from Je-An through an unregistered contract of lease. The Court simply cannot subscribe to AQA's claim^[51] that its status as a tenant renders its possession adverse to that of Plantersbank, in consonance with the ruling in *China Bank v. Spouses Lozada*.^[52] In the said case, the "tenant" contemplated clearly refers to an "agricultural tenant" who: (a) possesses the property in his own right; and (b) is protected by Presidential Decree (PO) No. 1038^[53] wherein a tenant tiller of private agricultural lands devoted to crops other than rice and/or corn shall not be removed, ejected, ousted or excluded from his farmholding unless directed by a final decision or order of the court for causes provided by law, which does not include sale of the land^[54] - and not to a "civil law tenant."

It bears to emphasize that a civil law lease is a mere personal right. It *partakes of the nature of a real right* when it is recorded on the title of the lessor only in the sense that it is binding even as against third persons without actual notice of the transaction.^[55] Under Section 51 of PD No. 1529,^[56] otherwise known as the Land Registration Decree, "no deed, mortgage, lease or other voluntary instrument, except a will purporting to convey or affect registered land shall take effect as a conveyance or bind the land" until its registration. In the present case, AQA's unregistered lease with Je-An is, thus, not binding on Plantersbank.

Consequently, Je-An and AQA cannot be considered third parties holding the subject properties adversely to KTC, the defaulting debtor mortgagor. Resultantly, the general rule, and not the exception, applies to the instant petitions, rendering it the mandatory and ministerial duty of the RTC to issue the writ of possession in favor of Plantersbank as the confirmed owner, and of the Sheriff to implement the said writ. As this Court ruled in *St. Dominic Corp. v. Intermediate Appellate Court*:^[57]

The right of the respondent to the possession of the property is clearly unassailable. It is founded on the right of ownership. As the purchaser of the properties in the foreclosure sale, and to which the respective titles thereto have already been issued, the petitioner's rights over the property has become absolute, vesting upon it the right of possession of the property which the court must aid in affecting its delivery. After such delivery, the purchaser becomes the absolute owner of the property. As we said in *Tan Soo Huat v. Ongwico* (63 Phil., 746), the deed of conveyance entitled the purchaser to have and to hold the purchased property. This means, that the purchaser is entitled to go immediately upon the real property, and that it is the sheriff's inescapable duty to place him in such possession. (Citation omitted).

Nonetheless, the Court would like to take exception to the CA's ruling, limiting the remedies of the adverse third party to vindicate his claim of ownership and/or possession over the foreclosed property to a *terceria* and an independent separate action once a writ of possession had already been issued, as in this case. In *Gagoomal v. Spouses Villacorta*,^[58] the Court ruled that aside from such remedies, the adverse third party may take other legal remedies to prosecute his claim, such as invoking the supervisory power of the RTC to enjoin the enforcement/implementation of the writ of possession, as what petitioners did in this case. Unquestionably, the RTC has a general supervisory control over the entire