

SECOND DIVISION

[G.R. No. 196950, June 18, 2014]

HELEN E. CABLING, ASSISTED BY HER HUSBAND ARIEL CABLING, PETITIONER, VS. JOSELIN TAN LUMAPAS, AS REPRESENTED BY NORY ABELLANES, RESPONDENT.

DECISION

BRION, J.:

We review the present petition for review on *certiorari*^[1] that assails the May 12, 2011 decision^[2] of the Court of Appeals (CA) in CA-G.R. SP No. 110865. The CA dismissed the petition for *certiorari*, prohibition and *mandamus* filed by petitioner Helen E. Cabling, assisted by her husband Ariel Cabling, which questioned the July 14, 2009^[3] and September 10, 2009^[4] orders of the Regional Trial Court (RTC) 3rd Judicial Region, Branch 75, Olongapo City, in Other Case No. 16-0-09.

The Facts

The petitioner was the highest bidder in an extrajudicial foreclosure sale conducted on December 21, 2007 over a 216-square meter property situated in the Barrio of Sta. Rita, Olongapo City and covered by Transfer Certificate of Title (TCT) No. T-14852.^[5] The Final Deed of Sale^[6] was issued by the Sheriff of Olongapo City on February 14, 2009 and the title to the property was duly transferred. TCT No. T-14853 was issued to the petitioner on March 23, 2009.^[7]

On May 6, 2009, the petitioner filed an Application^[8] for the Issuance of a Writ of Possession with the RTC.

On May 19, 2009, the RTC issued an order^[9] granting the petitioner's application, and subsequently issued a Writ of Possession^[10] and Notice to Vacate^[11] dated May 20, 2009 and May 25, 2009, respectively.

On May 29, 2009, respondent Joselin Tan Lumapas, through counsel, filed a Motion for Leave of Court for Intervention as Party Defendant (with Urgent Motion to Hold in Abeyance Implementation of Writ of Possession)^[12] and an Answer in Intervention,^[13] as a third party in actual possession of the foreclosed property. She claimed that the property had previously been sold to her by Aida Ibabao, the property's registered owner and the judgment debtor/mortgagor in the extrajudicial foreclosure sale, pursuant to a Deed of Conditional Sale.^[14]

On June 1, 2009, the RTC issued an order^[15] holding in abeyance the implementation of the petitioner's writ of possession until after the resolution of the respondent's motion. The following day, the RTC denied the respondent's motion for

intervention.^[16] The respondent promptly filed a motion for reconsideration.^[17]

The RTC's Orders

On July 14, 2009, the RTC issued the 1st assailed order^[18] granting the respondent's motion for reconsideration. It recalled and rendered ineffective the writ of possession issued to the petitioner, stating that "an ex-parte writ of possession issued pursuant to Act No. 335 (sic), as amended, cannot be enforced against a third person who is in actual possession of the foreclosed property and who is not in privity with the debtor/mortgagor."^[19] Considering that the respondent was not a party to the extrajudicial foreclosure, the RTC held that she cannot be ousted of her possession by a mere *ex-parte* motion for the issuance of a possessory writ, and that the petitioner must now resort to the appropriate judicial process in order to recover the foreclosed property.

This time, the petitioner moved to reconsider the RTC's July 14, 2009 order, but the RTC denied the petitioner's motion in an order dated September 10, 2009 - the 2nd assailed order.^[20]

The CA Ruling

Before the CA, the petitioner filed a petition for *certiorari*, prohibition and *mandamus*, under Rule 65 of the Rules of Court, assailing the July 14, 2009 and September 10, 2009 orders of the RTC.

In a decision dated May 12, 2011, the CA dismissed the petitioner's Rule 65 petition and affirmed *in toto* the RTC's assailed orders. It ruled that, while the issuance of a writ of possession is generally a ministerial act, the RTC committed no grave abuse of discretion in recalling the petitioner's writ of possession because "the obligation of the trial court to issue a writ of possession ceases to be ministerial once it appears that there is a third party in possession of the property claiming a right adverse to that of the debtor/mortgagor[; and where] such third party exists, the trial court should conduct a hearing to determine the nature of his adverse possession."^[21]

The Petition

The petitioner argues that the present case is not an *exception* to the ministerial issuance of a writ of possession.

While recognizing the respondent's actual possession of the subject property, the petitioner contends that such possession is not adverse to that of the judgment debtor/mortgagor. Neither is possession in the concept of an owner because in a conditional sale, ownership is retained by the seller until the fulfillment of a positive suspensive condition, that is, the full payment of the purchase price.

Our Ruling

We find merit in the petitioner's arguments.

The well-settled rule is that in the extrajudicial foreclosure of real estate mortgages

under Act No. 3135^[22] (as amended), the issuance of a writ of possession^[23] is *ministerial* upon the court after the foreclosure sale and during the redemption period when the court may issue the order for a writ of possession upon the mere filing of an *ex parte* motion and the approval of the corresponding bond.^[24]

The writ of possession also issues *as a matter of course*, without need of a bond or of a separate and independent action, after the lapse of the period of redemption,^[25] and **after the consolidation of ownership and the issuance of a new TCT in the purchaser's name.**^[26]

There is, however, an exception to the rule.

Under Section 33,^[27] Rule 39 of the Rules of Court, which is made applicable to extrajudicial foreclosures of real estate mortgages, the possession of the property shall be given to the purchaser or last redemptioner unless a third party is actually holding the property in a capacity adverse to the judgment obligor.^[28] Thus, the court's obligation to issue an *ex parte* writ of possession in favor of the purchaser in an extrajudicial foreclosure sale ceases to be ministerial when there is a third party in possession of the property claiming a right adverse to that of the judgment debtor/mortgagor.

We emphasize that the exception provided under Section 33, Rule 39 of the Rules of Court contemplates a situation in which a third party holds the property **by adverse title or right**, such as that of a co-owner, tenant or usufructuary, **who possesses the property in his own right, and is not merely the successor or transferee of the right of possession of another co-owner or the owner of the property.**^[29]

In the present case, the respondent cannot be said to possess the subject property by adverse title or right as her possession is merely premised on the alleged *conditional* sale of the property to her by the judgment debtor/mortgagor.

The execution of a contract of conditional sale does not immediately transfer title to the property to be sold from seller to buyer. In such contract, ownership or title to the property is retained by the seller until the fulfillment of a positive suspensive condition which is normally the payment of the purchase price in the manner agreed upon.^[30]

In the present case, the Deed of Conditional Sale between the respondent (buyer) and the subject property's registered owner (seller) expressly reserved to the latter ownership over the property until full payment of the purchase price, despite the delivery of the subject property to the respondent. It is provided in paragraph 6 of the parties' contract that only upon full payment of the total sale value of P2.2 million that the seller shall execute a deed of absolute sale in favor of the respondent.^[31]

It likewise appears from the records that no deed of absolute sale over the subject property has been executed in the respondent's favor. Thus, the respondent's possession from the time the subject property was "delivered" to her by the seller cannot be claimed as possession in the concept of an owner, as the ownership and