

## SECOND DIVISION

[ G.R. No. 200667, March 11, 2013 ]

**RURAL BANK OF STA. BARBARA (ILOILO), INC., PETITIONER,  
VS. GERRY CENTENO, RESPONDENT.**

### R E S O L U T I O N

**PERLAS-BERNABE, J.:**

Assailed in this Petition for Review on *Certiorari*<sup>[1]</sup> is the January 31, 2012 Decision<sup>[2]</sup> of the Cebu City Court of Appeals (CA) in CA-G.R. CV No. 78398 which set aside the October 8, 2002 Decision of the Regional Trial Court of Barotac Viejo, Iloilo City, Branch 66 (RTC) in Cadastral Case No. 98-069<sup>[3]</sup> and denied the issuance of a writ of possession for Cadastral Lot Nos. 964, 958 and 959 of the Ajuy, Iloilo Cadastre (subject lots) in petitioner's favor.

#### The Facts

Spouses Gregorio and Rosario Centeno (Sps. Centeno) were the previous owners of the subject lots. During that time, they mortgaged the foregoing properties in favor of petitioner Rural Bank of Sta. Barbara (Iloilo), Inc. as security for a P1,753.65 loan. Sps. Centeno, however, defaulted on the loan, prompting petitioner to cause the extrajudicial foreclosure of the said mortgage. Consequently, the subject lots were sold to petitioner being the highest bidder at the auction sale. On October 10, 1969, it obtained a Certificate of Sale at Public Auction<sup>[4]</sup> which was later registered with the Register of Deeds of Iloilo City on December 13, 1971.<sup>[5]</sup>

Sps. Centeno failed to redeem the subject lots within the one (1) year redemption period pursuant to Section 6<sup>[6]</sup> of Act No. 3135.<sup>[7]</sup> Nonetheless, they still continued with the possession and cultivation of the aforesaid properties. Sometime in 1983, respondent Gerry Centeno, son of Sps. Centeno, took over the cultivation of the same. On March 14, 1988, he purchased the said lots from his parents. Accordingly, Rosario Centeno paid the capital gains taxes on the sale transaction and tax declarations were eventually issued in the name of respondent.<sup>[8]</sup> While the latter was in possession of the subject lots, petitioner secured on November 25, 1997 a Final Deed of Sale thereof and in 1998, was able to obtain the corresponding tax declarations in its name.<sup>[9]</sup>

On March 19, 1998, petitioner filed a petition for the issuance of a writ of possession before the RTC, claiming entitlement to the said writ by virtue of the Final Deed of Sale covering the subject lots.<sup>[10]</sup> Respondent opposed the petition, asserting that he purchased and has, in fact, been in actual, open and exclusive possession of the same properties for at least fifteen (15) years.<sup>[11]</sup> He further averred that the foreclosure sale was null and void owing to the forged signatures in the real estate

mortgage. Moreover, he claims that petitioner's rights over the subject lots had already prescribed.<sup>[12]</sup>

### **Ruling of the RTC**

On October 8, 2002, the RTC rendered its Decision<sup>[13]</sup> in Cadastral Case No. 98-069, finding petitioner to be the lawful owner of the subject lots whose rights became absolute due to respondent's failure to redeem the same. Consequently, it found the issuance of a writ of possession ministerial on its part.<sup>[14]</sup> Dissatisfied, respondent appealed to the CA.

### **Ruling of the CA**

The CA, through its January 31, 2012 Decision,<sup>[15]</sup> reversed the RTC and ruled against the issuance of a writ of possession. It considered respondent as a third party who is actually holding the property adverse to the judgment obligor and as such, has the right to ventilate his claims in a proper judicial proceeding i.e., an ejectment suit or reivindicatory action.<sup>[16]</sup> Aggrieved, petitioner filed the instant petition.

### **Issue Before The Court**

The sole issue in this case is whether or not petitioner is entitled to a writ of possession over the subject lots.

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

The petition is meritorious.

It is well-established that after consolidation of title in the purchaser's name for failure of the mortgagor to redeem the property, the purchaser's right to possession ripens into the absolute right of a confirmed owner. At that point, the issuance of a writ of possession, upon proper application and proof of title, to a purchaser in an extrajudicial foreclosure sale becomes merely a ministerial function,<sup>[17]</sup> unless it appears that the property is in possession of a third party claiming a right adverse to that of the mortgagor.<sup>[18]</sup> The foregoing rule is contained in Section 33, Rule 39 of the Rules of Court which partly provides:

*Sec. 33. Deed and possession to be given at expiration of redemption period; by whom executed or given. —*

x x x x

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 and underscoring supplied)