

## THIRD DIVISION

[ G.R. No. 192813, January 18, 2012 ]

**VASHDEO GAGOOMAL, PETITIONER, VS. SPOUSES RAMON AND NATIVIDAD VILLACORTA, RESPONDENTS.**

### D E C I S I O N

**PERLAS-BERNABE, J.:**

Assailed in this Petition for Review on Certiorari under Rule 45 of the Rules of Court is the Decision<sup>[1]</sup> of the Court of Appeals ("CA") dated March 8, 2010 in CA-G.R. SP No. 109004, as well as the Resolution<sup>[2]</sup> dated July 7, 2010 denying the motion for reconsideration thereof. The dispositive portion of the assailed Decision reads:

"**WHEREFORE**, premises considered, the petition is **GRANTED**. The assailed Orders dated August 5, 2008 and March 20, 2009 issued by Hon. Danilo S. Cruz of the Regional Trial Court, Branch 152, Pasig City are hereby **REVERSED** and **SET ASIDE** and another one entered, the Motion to Quash Writ of Possession filed by spouses Ramon and Natividad Villacorta in Civil Case No. 67381 is **GRANTED**. **ACCORDINGLY**, the Writ of Possession issued in Civil Case No. 67381 is ordered **QUASHED**.

**SO ORDERED."**

### **The Facts**

Albert Zeñarosa ("Zeñarosa") was the registered owner of a parcel of land located in Ayala Alabang Village, Alabang, Muntinlupa City, covered by Transfer Certificate of Title (TCT) No. 170213. He mortgaged the same in favor of BPI Family Savings Bank ("BPI") which was duly annotated on the title on June 7, 1990.

Subsequently, Zeñarosa obtained a loan in the amount of \$300,000.00 from RAM Holdings Corporation ("RAM"), secured by a second mortgage<sup>[3]</sup> over the property and a Promissory Note<sup>[4]</sup>. The parties likewise executed a Memorandum of Agreement<sup>[5]</sup> ("MOA") dated March 2, 1995 whereby Zeñarosa, through an Irrevocable Special Power of Attorney, authorized RAM, among others, to sell the subject property in case of his failure to pay.

Zeñarosa failed to settle his obligations prompting RAM to file a Complaint<sup>[6]</sup> for collection of sum of money with damages against him and BPI before the RTC of Pasig City, Branch 152, docketed as Civil Case No. 67381. RAM also caused the annotation of a notice of *lis pendens* on TCT No. 170213 on June 11, 1999.

Pending Civil Case No. 67381, Zeñarosa failed to pay his obligation to BPI resulting

in the foreclosure of the subject property. The certificate of sale was annotated on TCT No. 170213 on March 24, 2000.

Meanwhile, RAM sold its rights and interests over the subject property to New Summit International, Inc., represented by its President, Vashdeo Gagoomal, herein petitioner. The assignment was annotated on TCT No. 170213 on October 16, 2000.

On August 29, 2002, one Luis P. Lorenzo, Jr. ("Lorenzo") filed a complaint for recovery of sum of money with application for a writ of preliminary attachment against Zeñarosa before the RTC of Makati City, Branch 64, docketed as Civil Case No. 02-1038. A writ of preliminary attachment was issued on September 20, 2002, pursuant to which the Branch Sheriff of Makati City attached the subject property. The lien was annotated on TCT No. 170213 on September 30, 2002.

On the other hand, Zeñarosa redeemed the foreclosed property from BPI on March 23, 2003. Thereafter, he sold the property to a certain Patricia A. Tan ("Tan") in whose favor TCT No. 10206<sup>[7]</sup> was issued on April 4, 2003. The annotations of the notice of *lis pendens* in Civil Case No. 67381, as well as the notice of levy on attachment in Civil Case No. 02-1038, were carried over to her title.

In the meantime, in Civil Case No. 02-1038, Lorenzo obtained a favorable decision which had become final and executory. A notice of levy and execution on the subject attached property was issued and annotated on the title. On January 15, 2004, the property was sold at public auction to

Lorenzo for P9,034,166.00 and the Certificate of Sale was annotated on TCT No. 10206 on January 30, 2004, giving Zeñarosa until January 29, 2005 within which to redeem the property.

Subsequently, or on April 30, 2004, the RTC rendered judgment in favor of RAM in Civil Case No. 67381 for sum of money.<sup>[8]</sup> Pending Zeñarosa's appeal to the CA, docketed as CA-G.R. CV No. 84523, RAM filed a motion for execution pending appeal, which was granted.<sup>[9]</sup> On December 14, 2004, the property subject of notice of *lis pendens* was sold at public auction to petitioner, the successor-in-interest of RAM, for P19,793,500.00.<sup>[10]</sup> The certificate of sale was annotated on Tan's TCT No. 10206 on December 17, 2004.

On January 29, 2005, in view of Zeñarosa's failure to redeem the property from Lorenzo, the title over the subject property was consolidated in the latter's name. A writ of possession was issued in favor of Lorenzo, who subsequently sold the property to Natividad Villacorta, one of the respondents herein, for P6,000,000.00. Immediately after purchasing the property, respondents took possession thereof.

Meanwhile, Zeñarosa's appeal in CA-G.R. CV No. 84523 was dismissed, and the decision in favor of RAM became final and executory on October 7, 2005. With a sale annotated in its favor, and without Zeñarosa exercising his right of redemption, a final Deed of Sale was issued in favor of petitioner, the successor-in-interest of RAM, on December 14, 2005. By virtue of a writ of possession<sup>[11]</sup> issued by the RTC on February 1, 2007 in Civil Case No. 67381, petitioner divested the respondents of possession of the disputed property.

The foregoing developments prompted the respondents to file a Motion to Quash Writ of Possession<sup>[12]</sup> in Civil Case No. 67381 before the RTC of Pasig City, Branch 152, on March 20, 2007. They also filed a case for quieting of title and recovery of possession before the RTC of Muntinlupa City, Branch 276, docketed as Civil Case No. 08-011.

On August 5, 2008, the RTC of Pasig City, Branch 152, issued an Order<sup>[13]</sup> in Civil Case No. 67381 denying respondents' Motion to Quash Writ of Possession. It also directed the Registry of Deeds of Muntinlupa City to issue a new transfer certificate of title in the name of petitioner Vashdeo Gagoomal. The motion for reconsideration<sup>[14]</sup> thereof was similarly denied.<sup>[15]</sup>

Aggrieved, the respondents filed a petition for certiorari with prayer for injunctive relief<sup>[16]</sup> before the CA, ascribing grave abuse of discretion on the part of the RTC in directing the "transfer of title over the subject property" to petitioner; in denying their motion to quash the writ of possession; and in refusing to restore to them the possession of the subject property.

In its assailed Decision, the CA granted respondents' petition, ratiocinating as follows:

"Records show that spouses Villacorta derived their rights in the subject property from their predecessor-in-interest, Lorenzo, who purchased the same in a sale on execution on January 15, 2004. The title to the subject property was consolidated in favor of Lorenzo on January 29, 2005 and said annotation was reflected on the certificate of title. Gagoomal, on his part, maintains that he has a superior right over Lorenzo because his predecessor-in-interest, Ram, was able to cause the annotation of *lis pendens* ahead of Lorenzo's writ of attachment.

The fact that the notice of *lis pendens* regarding to [sic] Civil Case No. 67381 was annotated ahead of the attachment of the subject property in Civil Case No. 02-1038 is of no moment. Hence, We agree with spouses Villacorta that Gagoomal did not acquire any title to the property since what he purchased during the public auction on October 14, 2004 was only the remaining right of redemption of Zeñarosa.

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In the present case, the annotation of Ram of the *lis pendens* was improper because the case filed by Ram against Zeñarosa was purely a personal action. Civil Case No. 67381, entitled *Ram Holdings Corporation vs. Albert Zeñarosa, et. al.*, is for Collection of Sum of Money with Damages. It has been held that the doctrine of *lis pendens* has no application to a proceeding in which the only object sought is the recovery of a money judgment, though the title or right of possession to property may be affected. It is essential that the property be directly affected, as where the relief sought in the action or suit includes the recovery of possession, or the enforcement of a lien, or an adjudication

between conflicting claims of title, possession, or right of possession to specific property, or requiring its transfer or sale [citation omitted]”<sup>[17]</sup>

Essentially, the CA concluded that the RTC committed grave abuse of discretion when it ordered the Register of Deeds to transfer to petitioner the title and possession of the subject property notwithstanding unrebutted evidence that Zeñarosa, the judgment debtor in Civil Case No. 67381, was no longer its owner and had only the remaining right of redemption at the time the property was sold at public auction to petitioner on December 14, 2004.

Corollary thereto, the CA held that the power of the RTC to execute its judgment extends only to property belonging to the judgment debtor in Civil Case No. 67381, Zeñarosa in this case, and did not include the respondents. The CA likewise refused to give merit to petitioner's contentions that the respondents can no longer ask for the modification or abrogation of the decision of the RTC which had already attained finality, and that since the writ of possession had already been implemented, then it can no longer be quashed.

### **The Issues**

Hence, this petition advancing the following issues for Our resolution, to wit:

“I.

RESPONDENTS DO NOT HAVE A RIGHTFUL CLAIM TO THE PROPERTY.

II.

RESPONDENTS HAD NO BASIS TO ASK FOR THE QUASHAL OF THE WRIT OF POSSESSION.

III.

THE PASIG REGIONAL TRIAL COURT CAN RULE ON TRANSFER OF TITLE.

IV.

PETITIONER'S RIGHTS ARE SUPERIOR TO THAT OF RESPONDENT'S.

V.

THE HONORABLE COURT OF APPEALS' DECISION OVERSTEPPED ISSUES.”<sup>[18]</sup>

### **The Ruling of the Court**

The petition is bereft of 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. We clarified in the case of *Motos v. Real Bank (A Thrift Bank), Inc.*<sup>[19]</sup> that a writ of possession may be issued under any of the following instances: (a) land registration proceedings under Section 17 of Act No. 496<sup>[20]</sup>; (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 as amended by Act No. 4118<sup>[21]</sup>.

Corollary thereto, Section 33, Rule 39 of the Rules of Court provides:

“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 (1) 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.”

In this case, the writ of possession was issued and executed in favor of petitioner under the foregoing provision. However, a punctilious review of the records will show that its grant and *enforcement* against the subject property, over which the respondents – third parties to Civil Case No. 67381 – claim an adverse interest, are devoid of legal basis.

It is a basic principle of law that money judgments are enforceable only against property incontrovertibly belonging to the judgment debtor, and if property belonging to any third person is mistakenly levied upon to answer for another man’s indebtedness, such person has all the right to challenge the levy through any of the remedies provided for under the Rules of Court. Section 16<sup>[22]</sup>, Rule 39 thereof specifically provides that a third person may avail himself of the remedies of either *terceria*, to determine whether the sheriff has rightly or wrongly taken hold of the property not belonging to the judgment debtor or obligor, or an independent “separate action” to vindicate their claim of ownership and/or possession over the foreclosed property.<sup>[23]</sup> However, “a person other than the judgment debtor who claims ownership or right over the levied properties is not precluded from taking other legal remedies to prosecute his claim”.<sup>[24]</sup>