

SECOND DIVISION

[G.R. No. 192377, July 25, 2012]

CESAR V. MADRIAGA, JR., PETITIONER, VS. CHINA BANKING CORPORATION, RESPONDENT.

DECISION

REYES, J.:

Before us is a petition for review of the Decision^[1] dated January 27, 2010 of the Court of Appeals (CA) dismissing the petition for *certiorari* and the Resolution^[2] dated May 26, 2010 denying the motion for reconsideration thereof in CA-G.R. SP No. 96640.

The CA upheld the Order^[3] dated August 11, 2006 of the Regional Trial Court (RTC), Branch 17 of Malolos, in Civil Case No. P-167-2002 denying herein petitioner Cesar V. Madriaga, Jr.'s (petitioner) motion to quash the ex parte writ of possession issued in favor of herein respondent China Banking Corporation (China Bank).

Factual Antecedents

The spouses Rolando and Norma Trajano (Spouses Trajano) were the original registered owners of the properties in dispute – two residential properties located in Ibayo, Marilao, Bulacan, covered by TCT Nos. 114853(M) and 114854(M). Sometime in 1991, they agreed to sell the properties to the petitioner's father, Cesar Madriaga, Sr. (Madriaga, Sr.) for P1,300,000.00 payable on installment basis. Upon completion of payment,^[4] Spouses Trajano executed in Madriaga, Sr.'s favor a Deed of Absolute Sale dated September 2, 1992.^[5]

Spouses Trajano, however, failed to deliver the lot titles, so Madriaga, Sr. sued for specific performance with the RTC Branch 19 of Malolos City, and docketed as Civil Case No. 521-M-93. The parties later entered into a compromise agreement, which the court approved on June 13, 1994.^[6] It was agreed that Spouses Trajano will take out a loan with Asia Trust Bank secured by a mortgage over the properties, and from the proceeds, settle the P1,225,000.00 they owed Madriaga, Sr.. It also appears from the agreement that the titles to the properties were retained by a certain Mariano and Florentino Blanco as security for a loan received by both Spouses Trajano and Madriaga, Sr..^[7] It was also agreed that the notice of *lis pendens* previously caused by Madriaga, Sr. to be annotated on the titles will be cancelled.^[8]

Spouses Trajano, however, failed to comply with their obligation under the compromise judgment. On motion of Madriaga, Sr., the RTC issued a writ of execution on September 6, 1994, and several properties of Spouses Trajano were levied upon, including the disputed properties. A notice of levy dated January 18,

1995 was also given to the Register of Deeds.^[9] At the auction held on February 22, 1995, Madriaga, Sr. was declared the winning bidder, and a certificate of sale was issued to him on March 22, 1995. After the lapse of the one-year redemption period, he was issued a final deed of sale; consequently, TCT Nos. 114853(M) and 114854(M) were cancelled and replaced by TCT Nos. T-284713(M) and T284714 in his name. On January 27, 1997, he secured an *ex parte* writ of possession.^[10]

Meanwhile, on January 2, 1995, Spouses Trajano obtained a loan from China Bank in the amount of P700,000.00, payable in one year and secured by a mortgage over TCT Nos. 114853(M) and 114854(M). They defaulted on their loan, and on October 20, 1997, China Bank foreclosed the mortgage and was declared the highest bidder at the foreclosure sale held on November 24, 1997. After consolidation of its titles, TCT Nos. T346239(M) and T-346240(M) were issued to China Bank to replace, for the second time, TCT Nos. 114853(M) and 114854(M).^[11]

On April 2, 2002, China Bank filed with the RTC Branch 17 of Malolos, an *ex parte* petition for writ of possession, docketed as Civil Case No. P-167-2002. It impleaded as respondents the "*Sps. Trajano and/or all persons claiming rights under their name.*" The writ was granted on July 12, 2002, and a copy served upon Madriaga, Sr. on August 2, 2002.

On November 1, 2002, Madriaga, Sr. filed an opposition to the writ wherein he asserted that he was the true owner of the properties, having obtained them at an earlier execution sale, and that his titles were subsisting. The RTC dismissed his opposition and denied his motion for reconsideration.

Undeterred, on April 13, 2005, the petitioner filed a "Motion to Quash/Abate the Writ of Possession,"^[12] which was denied by the RTC in its Order^[13] dated February 6, 2006. The RTC ruled that it had no jurisdiction over the parties' contending claims of ownership which was already pending before RTC Branch 12 of Malolos, docketed as Civil Case No. 406-M-2002 (specific performance case), entitled "*Cesar Madriaga v. China Banking Corporation, Register of Deeds of Meycauayan and Spouses Rolando and Norma Trajano.*" The RTC also noted that the petitioner's motion had been mooted by the satisfaction of the writ on April 15, 2005, per the Sheriff's return.^[14]

On March 6, 2006, the petitioner moved for reconsideration of the Order dated February 6, 2006 in Civil Case No. P-167-2002 (writ of possession case),^[15] insisting that he was deprived of due process because he was not served with notice of China Bank's *ex parte* petition for writ of possession, and that he came to know of its separate titles only when he was served the writ of possession.

Unmoved, the RTC denied his motion for reconsideration in its Order^[16] dated August 11, 2006, reasoning that it was merely performing a ministerial duty to issue the writ of possession to China Bank.

The petitioner, who succeeded to his father's properties then filed a petition for *certiorari* to the CA averring that the RTC gravely and seriously abused its discretion in denying the motion to abate/quash the writ of possession; in considering the issuance of the writ as ministerial; and in not declaring China Bank in bad faith, hence, not entitled to possession of the properties.^[17]

In the Decision dated January 27, 2010, the CA ruled that the RTC did not commit grave abuse of discretion in denying Madriaga, Sr.'s motion to quash or abate the *ex parte* writ of possession for the reason that the motion had already been rendered moot and academic after the writ was satisfied on April 15, 2005 with the physical removal of Madriaga, Sr. from the premises. On May 26, 2010, the CA denied the petitioner's motion for reconsideration.^[18]

Hence, the present petition.

The petitioner avers that the writ of possession was directed, not against his father, but against Spouses Trajano and "all persons claiming rights under them." He insists that his father derived his titles not through a voluntary transaction with Spouses Trajano, but by purchase in an execution sale. He also maintains that China Bank's titles are void because they came from a void mortgage.

The petitioner also asserts that the RTC gravely erred in not finding that China Bank failed to investigate the titles of Spouses Trajano before approving their loan, in view of the *lis pendens* annotation thereon. The petitioner adverts to the decision of the RTC in Civil Case No. 406-M-2002 (specific performance case)^[19] charging China Bank with notice of a serious flaw in Spouses Trajano's titles, whereas the petitioner's titles came from an earlier execution sale, and he and his father had been in open, uninterrupted and adverse possession since 1991.

The petitioner also insists that an *ex parte* writ of possession can be attacked either directly or collaterally for being null and void ab initio due to lack of due process, notwithstanding that in the meantime it has even been satisfied.

The petitioner, thus, maintains that his restoration to possession must be ordered because his eviction by a mere *ex parte* writ of possession violated his right to due process, since his father was unable to participate in the said proceedings due to lack of notice.

Our Ruling

We deny the petition.

The case has been rendered moot and academic by the full implementation/satisfaction of the writ of possession.

The trial court in its Order dated February 6, 2006 took note of the Sheriff's return stating that the writ of possession it issued to China Bank had been satisfied on April 15, 2005 after the petitioner had been successfully removed from the subject premises, prompting the court to declare that the petitioner's Motion to Quash/Abate the Writ of Possession has been rendered moot and academic.

Indeed, with the writ of possession having been served and satisfied, the said motions had ceased to present a justiciable controversy, and a declaration thereon

would be of no practical use or value.^[20]

Judicial power presupposes actual controversies, the very antithesis of mootness. Where there is no more live subject of controversy, the Court ceases to have a reason to render any ruling or make any pronouncement.^[21] Courts generally decline jurisdiction on the ground of mootness – save when, among others, a compelling constitutional issue raised requires the formulation of controlling principles to guide the bench, the bar and the public; or when the case is capable of repetition yet evading judicial review,^[22] which are not extant in this case.

The issuance of the *ex parte* writ of possession did not violate Madriaga, Sr.'s right to due process.

Section 7 of Act 3135 expressly allows the buyer at the auction to file a verified petition in the form of an *ex parte* motion for issuance of a writ of possession. This connotes that it is for the benefit of one party, without notice to or challenge by an adverse party. Being summary in nature, it cannot be said to be a judgment on the merits, but is simply an incident in the transfer of title.^[23] As pointed out in *Philippine National Bank v. Court of Appeals*,^[24] an *ex parte* petition for writ of possession under Act 3135 is, strictly speaking, not a judicial, or litigious, proceeding, for the reason that an extrajudicial foreclosure of mortgage is accomplished by filing a petition, not with any court of justice, but with the office of the sheriff of the place where the sale is to be made.

Indeed, the proceeding in a petition for a writ of possession is *ex parte* and summary in nature. It is a judicial proceeding brought for the benefit of one party only and without notice by the court to any person adversely interested. It is a proceeding wherein relief is granted without affording the person against whom the relief is sought the opportunity to be heard.^[25] No notice is needed to be served upon persons interested in the subject property.^[26] And as held in *Carlos v. Court of Appeals*,^[27] the *ex parte* nature of the proceeding does not deny due process to the petitioners because the issuance of the writ of possession does not bar a separate case for annulment of mortgage and foreclosure sale. Hence, the RTC may grant the petition even in the absence of Madriaga, Sr.'s participation.

Moreover, records show that Madriaga, Sr. was able to air his side when he filed: on November 1, 2002 an opposition to the writ; on April 13, 2005, a "Motion to Quash/Abate the Writ of Possession"; and on March 6, 2006, a motion for reconsideration of the Order dated February 6, 2006 denying his motion to quash/abate the writ of possession. When a party has been afforded opportunity to present his side, he cannot feign denial of due process.^[28]

The petitioner's predecessor is not a third-party whose possession of the disputed properties is adverse to that of Spouses Trajano.