

FIRST DIVISION

[G.R. No. 168523, March 09, 2011]

**SPOUSES FERNANDO AND ANGELINA EDRALIN, PETITIONERS,
VS. PHILIPPINE VETERANS BANK, RESPONDENT.**

D E C I S I O N

DEL CASTILLO, J.:

The right to possess a property follows the right of ownership; consequently, it would be illogical to hold that a person having ownership of a parcel of land is barred from seeking possession thereof.

Before us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, [1] assailing the Decision [2] dated June 10, 2005 of the Court of Appeals (CA) in CA-G.R. SP No. 89248. The dispositive portion of the assailed Decision reads:

WHEREFORE, premises considered, the present petition is hereby GIVEN DUE COURSE and the writ prayed for accordingly GRANTED. The assailed Orders dated November 8, 2004 and January 28, 2005 dismissing the *ex-parte* petition for issuance of writ of possession and denying petitioner's motion for reconsideration, respectively, are hereby ANNULLED and SET ASIDE. Respondent Judge is hereby DIRECTED to issue the writ of possession prayed for by the petitioner Philippine Veterans Bank over the subject property covered by TCT No. 78332 of the Registry of Deeds for Parañaque City, Metro Manila.

No pronouncement as to costs.

SO ORDERED. [3]

Factual Antecedents

Respondent Philippine Veterans Bank (Veterans Bank) is a commercial banking institution created under Republic Act (RA) No. 3518, [4] as amended by RA No. 7169. [5]

On February 5, 1976, Veterans Bank granted petitioner spouses Fernando and Angelina Edralin (Edralins) a loan in the amount of Two Hundred Seventy Thousand Pesos (P270,000.00). As security thereof, petitioners executed a *Real Estate Mortgage* (REM) [6] in favor of Veterans Bank over a real property situated in the Municipality of Parañaque and registered in the name of petitioner Fernando Edralin. The mortgaged property is more particularly described in Transfer Certificate of Title (TCT) No. 204889. The REM was registered with the Registry of

Deeds of the Province of Rizal.^[7] The REM and its subsequent amendments^[8] were all duly annotated at the back of TCT No. 204889.^[9]

The Edralins failed to pay their obligation to Veterans Bank. Thus, on June 28, 1983, Veterans Bank filed a *Petition for Extrajudicial Foreclosure*^[10] of the REM with the Office of the Clerk of Court and *Ex-Officio* Sheriff of Rizal.

In due course, the foreclosure sale was held on September 8, 1983, in which the *Ex-Officio* Sheriff of Rizal sold the mortgaged property at public auction. Veterans Bank emerged as the highest bidder at the said foreclosure sale and was issued the corresponding *Certificate of Sale*.^[11] The said *Certificate of Sale* was registered with the Registry of Deeds of the Province of Rizal and annotated at the back of TCT No. 204889 under Entry No. 83-62953/T-No. 43153-A on October 25, 1983.^[12]

Upon the Edralins' failure to redeem the property during the one-year period provided under Act No. 3135, Veterans Bank acquired absolute ownership of the subject property. Consequently, Veterans Bank caused the consolidation of ownership of the subject property in its name on January 19, 1994.^[13] The Register of Deeds of Parañaque, Metro Manila cancelled TCT No. 204889 under the name of Fernando Edralin and replaced it with a new transfer certificate of title, TCT No. 78332,^[14] in the name of Veterans Bank on February 3, 1994.

Despite the foregoing, the Edralins failed to vacate and surrender possession of the subject property to Veterans Bank. Thus, on May 24, 1996, Veterans Bank filed an *Ex-Parte Petition for the Issuance of a Writ of Possession*, docketed as Land Registration Case (LRC) No. 06-060 before Branch 274 of the Regional Trial Court (RTC) of Parañaque City. The same, however, was dismissed for Veterans Bank's failure to prosecute.^[15]

On July 29, 2003, Veterans Bank again filed an *Ex-Parte Petition for Issuance of Writ of Possession*,^[16] this time docketed as Land Registration Case No. 03-0121, before the RTC of Parañaque City. Veterans Bank divulged in its Certification against Forum-Shopping^[17] that the earlier case, LRC No. 96-060, involving the same subject matter and parties, was dismissed.

The Edralins moved to dismiss^[18] the petition on the ground that the dismissal of LRC No. 96-060 constituted *res judicata*.

Ruling of the Regional Trial Court

The trial court denied the motion to dismiss explaining that the ground of failure to present evidence is not a determination of the merits of the case hence does not constitute *res judicata* on the petition for issuance of a writ of possession.^[19]

Nevertheless, the trial court found no merit in the Veterans Bank's application and dismissed the same in its Order dated November 8, 2004.^[20] The trial court explained that, under paragraph (d) of the REM, the Veterans Bank agreed to take possession of the Edralins' property *without any judicial intervention*. The court held that granting the writ of possession to the Veterans Bank will violate the contractual

agreement of the parties. Paragraph (d) reads:

(d) ***Effective upon the breach of any condition of this mortgage*** and in addition to the remedies herein stipulated, the Mortgagee is hereby likewise appointed attorney-in-fact of the Mortgagor with full powers and authority, with the use of force, if necessary ***to take actual possession of the mortgaged property, without the necessity of any judicial order or any permission***, or power, to collect rents, to eject tenants, to lease or sell the mortgaged property or any part thereof, at a private sale without previous notice or advertisement of any kind and execute the corresponding bills of sale, lease or other agreement that may be deemed convenient, to make repairs or improvements on the mortgaged property and pay for the same and ***perform any other act which the Mortgagee may deem convenient for the proper administration of the mortgaged property.*** The payment of any expenses advanced by the Mortgagee in connection with the purposes indicated herein is also guaranteed by this Mortgage and such amount advanced shall bear interest at the rate of 12% per annum. Any amount received from sale, disposal or administration above-mentioned may be applied to the payment of the repairs, improvements, taxes and any other incidental expenses and obligations and also the payment of the original indebtedness and interest thereof. The power herein granted shall not be revoked during the life of this mortgage, and all acts that may be executed by the Mortgagee by virtue of said power are hereby ratified. In addition to the foregoing, the Mortgagor also hereby agrees, that the Auditor General shall withhold any money due or which may become due the Mortgagor or debtor from the Government or from any of its instrumentalities, except those exempted by law from attachment or execution, and apply the same in settlement of any and all amount due to the Mortgagee;^[21]

The trial court held that, assuming the contract allowed for the issuance of a writ of possession, Veterans Bank's right to seek possession had already prescribed. Without citing authority and adequate explanation, the court held that Veterans Bank had only 10 years from February 24, 1983 to seek possession of the property.

Veterans Bank moved for the reconsideration^[22] of the adverse decision. It directed the court's attention to paragraph (c) of the real estate mortgage, which expressly granted the mortgagee the right to avail itself of the remedy of extrajudicial foreclosure in case of the mortgagor's default. Paragraph (c) reads:

(c) If at any time the Mortgagor shall fail or refuse to pay the obligations herein secured, or any of the amortizations of such indebtedness when due, or to comply with any of the conditions and stipulations herein agreed, or shall, during the time this mortgage is in force, institute insolvency proceedings or be involuntarily declared insolvent, or shall use the proceeds of this loan for purposes other than those specified herein, or if this mortgage cannot be recorded in the corresponding Registry of Deeds, then all the obligations of the Mortgagor secured by this Mortgage

and all the amortization thereof shall immediately ***become due, payable and defaulted, and the Mortgagee may immediately foreclose this mortgage judicially in accordance with the Rules of Court, or extra-judicially in accordance with Act No. 3135, as amended, and under Act 2612, as amended.*** For the purpose of extra-judicial foreclosure the Mortgagor hereby appoints the Mortgagee his attorney-in-fact to sell the property mortgaged under Act No. 3135, as amended, to sign all documents and perform any act requisite and necessary to accomplish said purpose and to appoint its substitutes as such attorney-in-fact with the same powers as above specified. x x x^[23]

The motion for reconsideration was set for hearing on January 28, 2005. Due to a conflict of schedule, Veterans Bank's counsel moved^[24] to reset the hearing on its motion. In apparent denial of the motion to reset, the trial court proceeded to deny Veterans Bank's motion for reconsideration in the Order dated January 28, 2005.^[25] The trial court reiterated that paragraph (d) of the REM allowed Veterans Bank to take immediate possession of the property without need of a judicial order. It would be redundant for the court to issue a writ of possession in its favor.

This prompted Veterans Bank to file a *Petition for Mandamus with Prayer for Issuance of a Preliminary Mandatory Injunction*^[26] before the CA.

First among its arguments, Veterans Bank maintained that it was the trial court's ministerial duty^[27] to grant a writ of possession to the mortgagee who has consolidated and registered the property in its name.

Veterans Bank then assailed the trial court's holding that its right to a writ of possession had already prescribed. Respondent maintained that the writ can be issued *at any time* after the mortgagor failed to redeem the foreclosed property.^[28]

Lastly, Veterans Bank argued that, contrary to the trial court's finding, it did not contract away its right to an extrajudicial foreclosure under Act No. 3135, as amended, by the inclusion of paragraph (d) in the REM. Veterans Bank pointed out that, as evidenced by paragraph (c) of the REM, it expressly reserved the right to avail of the remedies under Act No. 3135.^[29]

Ruling of the Court of Appeals^[30]

The appellate court ruled in favor of Veterans Bank.

It held that the contractual provision in paragraph (d) to immediately take possession of the mortgaged property without need of judicial intervention is *distinct* from the right to avail of extrajudicial foreclosure under Section 7 of Act No. 3135, which was expressly reserved by Veterans Bank in paragraph (c) of the REM. The fact that the two paragraphs do not negate each other is evidenced by the qualifying phrase "*in addition to the remedies herein stipulated*" found in paragraph (c).

Having availed itself of the remedy of extrajudicial foreclosure, Veterans Bank, as the highest bidder, has the right to a writ of possession. This right may be availed

of any time after the buyer consolidates ownership. In fact, the issuance of the writ of possession is a ministerial function, the right to which cannot be enjoined or stayed, even by an action for annulment of the mortgage or the foreclosure sale itself.

The trial court's ruling that Veterans Bank's right to possess has prescribed is likewise erroneous. As already stated, Veterans Bank's right to possess the property is not based on their contract but on Act No. 3135.

Since the issuance of a writ of possession is a ministerial act of the trial judge, mandamus lies to compel the performance of the said duty.

Petitioners immediately filed this petition for review.

Issues

Petitioners submit the following issues for our consideration:

1. Whether mandamus was resorted to as a substitute for a lost appeal
2. Whether mandamus is the proper remedy to seek a review of the final orders of the trial court
3. Whether the consolidation of ownership of the extrajudicially foreclosed property through a Deed of Sale is in accordance with law
4. Whether the issuance of a writ of possession under Act [No.] 3135 is subject to the statute of limitations^[31]

Our Ruling

Propriety of the Remedy of Mandamus

Petitioners argue that Veterans Bank availed itself of the remedy of mandamus as a substitute for a lost appeal.^[32] Petitioners narrate the relevant dates that allegedly show the belatedness and impropriety of the petition for mandamus. Veterans Bank received the Order dated November 8, 2004 on November 18, 2004, thus it had until December 3, 2004 to file a motion for reconsideration. Since December 3, 2004 was declared a non-working holiday, Veterans Bank filed its motion for reconsideration on the next working day, December 6, 2004. With the said dates, it had only one day left from receipt of the January 28, 2005 Order, or until February 10, 2005, to file an appeal (citing Section 2, Rule 22) of the Rules of Court. Since Veterans Bank did not file an appeal on the following day, it had lost its right to appeal and the assailed orders allegedly attained finality.

Respondent counters that the issuance of a writ of possession is not an ordinary action for which the rules on appeal apply. The writ being a mere motion or an order of execution, appeal is not the proper remedy to question the trial court's ruling. In fact, Section 1, Rule 41 of the Rules of Court provides that no appeal may be taken from an order of execution, but Rule 65 special civil actions are available.