

THIRD DIVISION

[G.R. No. 157644, November 17, 2010]

**SPOUSES ERNESTO AND VICENTA TOPACIO, AS REPRESENTED
BY THEIR ATTORNEY-IN-FACT MARILOU TOPACIO-NARCISO,
PETITIONERS, VS. BANCO FILIPINO SAVINGS AND MORTGAGE
BANK, RESPONDENT.**

D E C I S I O N

BRION, J.:

Before the Court is a petition for review on *certiorari*,^[1] filed by petitioner spouses Ernesto and Vicenta Topacio (*petitioners*), assailing the August 26, 2002 Decision^[2] of the Court of Appeals (CA) in CA-G.R. SP No. 32389, as well as its March 17, 2003 Resolution^[3] denying the petitioners' motion for reconsideration. The CA Decision and Resolution affirmed *in toto* the October 1, 1993 Order of the Regional Trial Court of Valenzuela City, Branch 75, which issued an *alias* writ of possession in favor of the respondent Banco Filipino Savings and Mortgage Bank (*respondent*).

THE BACKGROUND FACTS

The background facts, as culled from the records, are summarized below.

The petitioners obtained a loan amounting to P400,000.00 from the respondent. To secure the loan, the petitioners executed on May 8, 1980, a real estate mortgage over Lot 1224-B-1 LRC Psd-15436, covered by TCT No. T-191117 (now 13554) of the Registry of Deeds of Bulacan, in favor of the respondent. The petitioners failed to pay the loan, prompting the respondent to file a Petition for Extrajudicial Foreclosure of Mortgage, pursuant to Act No. 3135. To satisfy the obligation, the Provincial Sheriff of Bulacan, on November 8, 1982, sold the mortgaged property at public auction, where the respondent emerged as the highest bidder. Accordingly, a Certification of Sale was issued in favor of the respondent and registered with the Registry of Deeds.^[4]

On May 26, 1983, the respondent filed a Petition for the Issuance of a Writ of Possession^[5] over the mortgaged property before the Regional Trial Court, Branch 172, Valenzuela City (RTC). In an Order^[6] dated December 12, 1983, the RTC granted the petition, conditioned on the posting of a P100,000.00 bond. Upon posting of the required bond, the RTC issued, on February 16, 1984, a writ of possession, commanding the sheriff to place the respondent in possession of the property.

The writ of possession was not implemented^[7] because, on February 27, 1984, the petitioners, filed with the RTC, a petition to set aside the auction sale and the writ of possession (with application for a temporary restraining order and a writ of

preliminary injunction).^[8] In an Order dated February 28, 1984, the RTC issued a temporary restraining order enjoining the respondent and the Deputy Sheriff from implementing the writ of possession it previously issued. ^[9] After hearing, the RTC, issued on March 13, 1984, a writ of preliminary injunction ordering the respondent and the Provincial Sheriff to desist from implementing the writ of possession and to refrain from interfering with and disrupting the possession of the petitioners over the subject parcel of land.^[10]

Sometime in April 1984, the respondent filed with the RTC its Motion to Admit Answer with Opposition to the Petition to Set Aside Auction Sale and Writ of Possession with Motion to Dissolve or Lift Preliminary Injunction (*Answer*) which was granted on April 26, 1984.^[11] On May 21, 1984, the petitioners filed their Reply thereto, praying that the writ of preliminary injunction previously issued be maintained.^[12]

More than two years after the filing of the Answer and the Reply, and after a series of postponements at the instance of both parties, then Presiding Judge Teresita D. Capulong issued an Order dated December 16, 1986, dismissing the respondent's petition for the issuance of a writ of possession on the ground of "failure to prosecute."^[13] The Order reads in full:

When this case was called for hearing, counsel for the oppositors [now petitioners], Atty. Constancio R. Gallamos, was present. Atty. Francisco Rivera [counsel for the respondent] was absent despite notice. Upon petition of the counsel for the oppositors, this case is hereby ordered dismissed for failure to prosecute.

SO ORDERED.

No copy of the above Order was served on the respondent^[14] whose operations the Monetary Board (Central Bank of the Philippines) shut down on January 25, 1985, for reasons not relevant to the present case.^[15]

Nearly six (6) years later (after the Court ordered the reorganization and resumption of the respondent's operations in G.R. No. 70054)^[16] or on August 19, 1992, the respondent filed a Motion to Clarify the Order of December 16, 1986. In the same motion, the respondent likewise moved for the issuance of an *alias* writ of possession. ^[17]

In an Order^[18] dated September 18, 1992, the RTC made a clarification that the Order of Dismissal of December 16, 1986 refers to the dismissal of the "main case for issuance of a writ of possession." In that same Order, the RTC denied the respondent's motion for the issuance of an *alias* writ of possession.

On May 18, 1993, the respondent moved for the reconsideration^[19] of the September 18, 1992 Order. In an Order^[20] dated June 2, 1993, the RTC, this time presided by Judge Emilio L. Leachon, Jr., reconsidered and set aside the Order of December 16, 1986 and granted the respondent's prayer for the issuance of an *alias*

writ of possession. The petitioners moved for a reconsideration of the June 2, 1993 Order and prayed that the implementation of the *alias* writ of possession be held in abeyance.

The RTC Ruling

On October 1, 1993, the RTC, now presided by Judge Jaime F.

Bautista, issued the assailed Order^[21] which denied the petitioners' motion for reconsideration and reiterated its order for the issuance of an *alias* writ of possession in favor of the respondent. The assailed RTC Order is summarized below.

First, the RTC ruled that the Order of Dismissal was granted on a "technicality" and that "[t]he ground of failure to prosecute is manifestly unfounded."^[22] The RTC held that "the power of the trial court to dismiss an action on the ground of *non prosecitur* is not unbounded. The real test x x x is whether under the facts and circumstances, the plaintiff is chargeable with want of due diligence in [failing] to proceed with reasonable promptitude."^[23] In the present case, the RTC noted that the records show that the case dragged on for years because of several postponements at the request of both parties, particularly petitioner Ernesto Topacio who went abroad for a long time during the pendency of the case.^[24]

Second, the RTC held that the December 16, 1986 Dismissal Order cannot be considered a dismissal on the merits as it was founded not on a substantial ground but on a technical one; it does not amount to a "declaration of the law [on] the respective rights and duties of the parties, based upon the ultimate x x x facts disclosed by the pleadings and evidence, and upon which the right of recovery depends, irrespective of formal, technical or dilatory objectives or contentions."^[25]

Third, the RTC ruled that the revival by a motion for reconsideration (filed on May 18, 1993) of the February 16, 1984 Order, granting the writ of possession, was seasonably filed by the respondent, pursuant to the period allowed under Section 6, Rule 39 of the Rules of Court. Citing *National Power Corporation v. Court of Appeals*,^[26] the RTC held that "[i]n computing the time [limit] for suing out an execution, x x x the general rule is that there should not be included the time when execution is stayed, either by agreement of the parties for a definite time, by injunction, by the taking of an appeal or writ of error so as to operate as a supersedeas, by the death of a party, or otherwise." The RTC noted that the running of the five-year period under Section 6 of the Rules of Court had been interrupted by the erroneous issuance of a writ of preliminary injunction; the February 16, 1984 Order never attained finality and was overtaken by the issuance of the Order dated June 2, 1993, granting the issuance of an *alias* writ of execution.^[27]

Finally, the RTC held that the respondent, as the winning bidder, "has an absolute right to a writ of possession,"^[28] considering that: (1) a writ of possession had been issued on February 16, 1984 and the corresponding bond had already been posted, although the writ was not enforced because of the erroneous injunction issued by Judge Capulong; and (2) there was no redemption by the petitioners.^[29]

On October 20, 1993, the petitioners filed their Petition for *Certiorari* and Prohibition under Rule 65 of the 1997 Rules of Court with prayer for the issuance of a

preliminary injunction (*petition*), docketed as CA-G.R. SP No. 32389.^[30] Before the CA, the petitioners argued that the RTC acted without jurisdiction or with grave abuse of discretion when it: (1) reinstated the respondent's case more than seven (7) years after the December 16, 1986 Dismissal Order became final and executory, and (2) issued an *alias* writ of execution upon a mere motion for reconsideration and not by an independent action pursuant to Section 6, Rule 39 of the Rules of Court.

The CA Ruling

On August 26, 2002, the CA denied the petitioners' petition and affirmed in *toto* the June 2, 1993 and October 1, 1993 Orders of the RTC. The CA found that the December 16, 1986 Order of the RTC does not amount to a dismissal on the merits as it was based on purely technical grounds. It noted that the records show that the respondent was not furnished a copy of the Dismissal Order; hence, the case cannot be deemed to be final with respect to the respondent. The CA also agreed with the RTC's conclusion that the delay in the resolution of the case cannot be solely attributed to the respondent and did not warrant its outright dismissal.^[31]

The CA held that an independent action for the revival of the writ of possession need not be filed in order to enforce the writ of possession issued on December 12, 1983 since Section 6, Rule 39 of the Rules of Court applies only to civil actions and not to special proceedings,^[32] citing *Heirs of Cristobal Marcos v. de Banuvar*.^[33]

The Petition

In the present petition,^[34] the petitioners contend that the CA erred in affirming the October 1, 1993 Order of the RTC considering that:

- 1) the December 16, 1986 Dismissal Order constitutes an adjudication on the merits which has already attained finality, and
- 2) a writ of possession may not be enforced upon mere motion of the applicant after the lapse of more than five (5) years from the time of its issuance.

On the first assignment of error, the petitioners submit that the December 16, 1986 Dismissal Order for failure to prosecute constitutes adjudication upon the merits, considering that the RTC did not declare otherwise, pursuant to Section 3, Rule 17 of the Rules of Court. The petitioners further contend that the Dismissal Order has become final and executory since the respondent belatedly filed the Motion to Clarify the Order of December 16, 1986 on August 19, 1992 or almost six years later. On these premises, the petitioners argue that *res judicata* has set in and consequently, the RTC had no jurisdiction to grant the motion for reconsideration and to issue an *alias* writ of possession in favor of the respondent.^[35]

On the second assignment of error, the petitioners contend that pursuant to Section 6, Rule 39 of the Rules of Court, the writ of possession issued on February 16, 1984 may no longer be enforced by a mere motion but by a separate action, considering that more than five years had elapsed from its issuance. The petitioners also argue that Section 6, Rule 39 of the Rules of Court applies to the present case since a petition for the issuance of a writ of possession is neither a special proceeding nor a land registration case.^[36]

In their Memorandum, the petitioners additionally submit that they do not dispute that the CA made a finding that the December 16, 1986 Dismissal Order was not properly served. They, however, point out that the CA made no such finding with respect to the September 18, 1992 Order of the RTC. The petitioners contend that the Motion for Reconsideration, filed on May 18, 1993 or eight months later from the September 18, 1992 Order by the respondent, was filed out of time. Thus, they conclude that any subsequent ruling of the RTC, including the June 2, 1993 and October 1, 1993 Orders, is barred by *res judicata*.^[37]

OUR RULING

We deny the petition for lack of merit.

A. Preliminary Considerations

Our review of the records, particularly the CA decision, indicates that the CA did not determine the presence or absence of grave abuse of discretion in the RTC decision before it. Given that the petition before the CA was a petition for *certiorari* and prohibition under Rule 65 of the Rules of Court, it appears that the CA instead incorrectly reviewed the case on the basis of whether the RTC decision on the merits was correct.

To put the case in its proper perspective, the task before us is to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the RTC decision before it. Stated otherwise, did the CA correctly determine whether the RTC committed grave abuse of discretion amounting to lack or excess of jurisdiction in ruling on the case?

As discussed below, our review of the records and the CA decision shows that the RTC did not commit grave abuse of discretion in issuing an *alias* writ of possession in favor of the respondent.

B. Applicability of Res Judicata

Under the rule of *res judicata*, a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies, in all later suits and on all points and matters determined in the previous suit. The term literally means a "matter adjudged, judicially acted upon, or settled by judgment."

^[38] The principle bars a subsequent suit involving the same parties, subject matter, and cause of action. The *rationale* for the rule is that "public policy requires that controversies must be settled with finality at a given point in time."^[39]

The doctrine of *res judicata* embraces two (2) concepts: the first is "bar by prior judgment" under paragraph (b) of Rule 39, Section 47 of the Rules of Court, and the second is "conclusiveness of judgment" under paragraph (c) thereof. *Res judicata* applies in the concept of "bar by prior judgment" if the following requisites concur: (1) the former judgment or order must be final; (2) the judgment or order must be on the merits; (3) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; and (4) there must be, between the first and the second action, identity of parties, of subject matter and of causes