

FIRST DIVISION

[G.R. NO. 148630, June 20, 2006]

**ANGELO DWIGHT PENSON, PETITIONER, VS. SPOUSES MELCHOR
AND VIRGINIA MARANAN, RESPONDENTS.**

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Angelo Dwight Penson (petitioner), married to Jovita Lorna Penson (Jovita), is the registered owner of two parcels of land situated in Parañaque covered by Transfer Certificate of Title (TCT) Nos. 110503 and 110504, covering 640 square meters each. On this property stands their family home where they have been residing for more than 10 years.^[1]

On July 22, 1999, petitioner received a copy of a writ of possession issued by the Regional Trial Court (RTC) of Parañaque City, Branch 257, in LRC Case No. 99-065. Upon inquiry, petitioner learned that the property was the subject of a Deed of Real Estate Mortgage dated August 17, 1992, which secured a promissory note dated August 14, 1992 covering a loan in the amount of P1,950,000.00 executed by Jovita, in her own behalf and as petitioner's attorney-in-fact, in favor of respondents. Petitioner alleged that the Deed of Real Estate Mortgage and the Special Power of Attorney dated July 9, 1992 were fraudulent.^[2]

It appears that the writ of possession was issued pursuant to a Compromise Agreement dated March 7, 1997 between Jovita and respondents in Civil Case No. 95-0100, an action for annulment of contract with prayer for the issuance of a writ of preliminary injunction and restraining order, filed on May 9, 1995, by Jovita against respondents. The Compromise Agreement which was approved by the RTC in its Order dated March 7, 1997, provides for the following terms:

1. Plaintiff (Jovita) acknowledged her total obligation to the defendants (respondents) amounting to P6,082,373.00 consisting of the principal and interest as of October 17, 1996;
2. In consideration of the plaintiff's, [sic] her willingness to settle and paid [sic] her obligation, the defendants accept the offer of the plaintiff to pay the amount of THREE MILLION (P3,000,000.00) PESOS instead of the amount of P6,082.373.00 to be paid on six monthly installments to wit:

x x x x

3. The aforesated payment shall be covered by postdated checks to be issued by the plaintiff upon the signing of this Compromise

Agreement;

4. If the plaintiff failed to pay one month installment or if any of the six (6) checks shall be dishonored by the drawee bank, the same shall be construed as a violation of this Compromise Agreement and the defendants shall have the right to foreclose the Real Estate Mortgage executed by the plaintiff in favor of the defendants on August 17, 1992 covering the parcels of land together with the improvements covered by TCT No. (110503) 64064 and TCT No. (110504) 64065 located at No. 5 Lawan Street, Unit[ed] Parañaque Subdivision, Parañaque, Metro Manila, as provided in #3 of the Deed of Real Estate Mortgage subject to the redemption period provided for by law;
5. The defendants may likewise move for the issuance of a Writ of Execution by mere motion from the Honorable Court in case of violation of this Compromise Agreement;^[3]

x x x x

Due to Jovita's failure to fulfill her obligation under the terms of the Compromise Agreement, the property was extrajudicially foreclosed on October 23, 1997, with respondents as the highest bidders in the foreclosure sale. The Deputy Sheriff issued a Certificate of Sale on November 6, 1997,^[4] and TCT Nos. 139462 and 139463 were issued on November 18, 1998, in the name of respondents.^[5] Respondents then moved for the issuance of a writ of possession, which was denied by the RTC in its Order dated March 19, 1999, on the ground that the Compromise Agreement does not contain a provision on the automatic issuance of a writ of possession.^[6] Respondents filed a motion for reconsideration, which was also denied by the RTC in an Order dated May 4, 1999, for the reason that the remedy available to respondents is the filing of a petition for the issuance of a writ of possession under Act No. 3135.^[7]

Thus, respondents filed an *ex-parte* petition for the issuance of a writ of possession with the same RTC of Parañaque City, Branch 257, docketed as LRC Case No. 99-065.^[8] The RTC granted the petition in its Decision dated July 14, 1999,^[9] which provides for the following dispositive portion:

WHEREFORE, let a writ of possession issue ordering Jovita Lorna F. Penson and all persons claiming rights under her to deliver and transfer possession of the properties covered by Transfer Certificates of Title Nos. 139462 and 139463 of the Registry of Deeds of Parañaque to petitioners Sps. Melchor and Virginia Maranan.

SO ORDERED.

On July 21, 1999, a writ of possession was issued directing the deputy sheriff to implement the RTC's Decision.^[10]

Before the writ of possession can be satisfied, petitioner filed a complaint for Annulment of Title with Damages and Urgent Prayer for Issuance of Temporary

Restraining Order and/or Preliminary Injunction with the RTC of Parañaque City, Branch 260, docketed as Civil Case No. 99-0272.^[11] Acting on petitioner's prayer for the issuance of a writ of preliminary mandatory injunction, the RTC issued an Order dated August 17, 1999, granting the same and enjoining respondents and all persons acting for and in their behalf to cease and desist from implementing the writ of possession, subject to petitioner's filing of a bond in the amount of P3,000,000.00.^[12] Respondents moved for reconsideration but this was denied by the RTC.^[13]

Respondents then filed a petition for *certiorari* with the Court of Appeals (CA), assailing the RTC Orders dated August 17, 1999 and March 20, 2000. Respondents contended that the RTC has no jurisdiction to issue a writ of preliminary injunction because this is in interference with the orders of a co-equal court. Respondents also claimed that they are already the owners of the property and petitioner has no more right *in esse* that needs protection.^[14]

The CA sustained respondents' arguments and granted the petition, setting aside the RTC Orders dated August 17, 1999 and March 20, 2000 in the assailed Decision dated November 14, 2000.^[15] The dispositive portion of the Decision reads:

WHEREFORE, premises considered, the instant Petition for Certiorari is GRANTED and the Orders dated August 17, 1999 and March 20, 2000 of the Regional Trial Court of Parañaque City, Branch 260 are hereby SET ASIDE.

SO ORDERED.

Petitioner filed a motion for reconsideration, which was denied by the CA in its assailed Resolution dated June 20, 2001.^[16]

Hence, the present petition for review on *certiorari* under Rule 45 of the Rules of Court based on the following grounds:

A.

THE HONORABLE COURT OF APPEALS ERRED IN CONCLUDING THAT THE WRIT OF PRELIMINARY INJUNCTION ISSUED BY JUDGE HELEN BAUTISTA-RICAFORT CONSTITUTES UNLAWFUL INTERFERENCE WITH THE PROCESSES OF A CO-EQUAL AND COORDINATE COURT AND IS THUS INVALID.

B.

THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT THE WRIT OF POSSESSION CANNOT BE ENJOINED BECAUSE THE PURCHASER IS ENTITLED TO SUCH WRIT AS A MATTER OF RIGHT AND IN APPLYING *PNB V. ADIL*, 118 SCRA 110.

C.

THE HONORABLE COURT OF APPEALS ERRED IN FINDING THAT THE

NOTARIZED SPECIAL POWER OF ATTORNEY IS ENTITLED TO THE PRESUMPTION OF VALIDITY.^[17]

Petitioner argues that the case of *PDCP Development Bank v. Vestil* applied by the CA in annulling the RTC orders is not appropriate because unlike in the *PDCP case* where the spouses Suico jointly executed the mortgage on their property, the present case involves a mortgage solely executed by Jovita over a property exclusively owned by petitioner who did not give his consent nor was a privy thereto. Petitioner also argues that in the *PDCP case*, the sheriff was commanded to cause both spouses to vacate the property, while in this case, the order to the sheriff only covers Jovita and all persons claiming rights under her, and the sheriff has no authority to enforce it against petitioner.

Petitioner further contends that there is no interference by a co-equal court because the writ of preliminary injunction merely orders the sheriff not to enforce the writ of possession against persons other than Jovita. Petitioner likens the issuance of the writ of preliminary injunction in this case to a writ of preliminary injunction issued by a trial court enjoining the implementation of a writ of attachment against a property not belonging to a defendant. It is also argued that the issuance of a writ of possession is distinct from its enforcement. According to petitioner, the real issue in this case is whether the writ of possession may be enforced against petitioner who is not named in the writ.

Finally, petitioner questions the finding of the CA in its Decision that the Special Power of Attorney was valid and regular on its face, arguing that the CA is limited to jurisdictional issues in resolving the petition before it and cannot make such ruling, as it is a matter that should be threshed out in a proper trial.

The Court finds the petition devoid of merit.

Indeed, jurisprudence is replete with the well-settled rule that the issuance of a writ of possession concomitant to an extrajudicial foreclosure proceeding is a ministerial duty of the court, and it issues as a matter of course even without the filing and approval of a bond after consolidation of ownership and the issuance of a new transfer certificate of title in the name of the purchaser.^[18]

Jurisprudence is also replete with the rule that no court has the power to interfere by injunction with issuance or enforcement of a writ of possession issued by another court of concurrent jurisdiction having the power to issue such writ.^[19]

The foregoing rules, however, are not without exception. Under Section 35, Rule 39 of the Rules of Court, which is made suppletory to the extrajudicial foreclosure of real estate mortgages by Section 6 of Act 3135, the possession of the mortgaged property may be awarded to a purchaser in the extrajudicial foreclosure *unless a third party is actually holding the property adversely to the judgment debtor*. In *Philippine National Bank v. Court of Appeals*,^[20] the Court held that the obligation of a court to issue an *ex-parte* writ of possession in favor of the purchaser in an extrajudicial foreclosure sale ceases to be ministerial once it appears that there is a third party in possession of the property who is claiming a right adverse to that of the debtor/mortgagor, to wit: