

SECOND DIVISION

[G. R. NO. 146933, June 08, 2006]

**SPOUSES CONSTANTINO ESPIRIDION AND REMEDIOS
ESPIRIDION AND SPOUSES RENATO RAMOS AND ERLINDA
RAMOS, PETITIONERS, VS. COURT OF APPEALS AND SECOND
BULACAN DEVELOPMENT BANK, RESPONDENTS.**

D E C I S I O N

CORONA, J.:

This special civil action for certiorari under Rule 65 of the Rules of Court assails the August 25, 2000 resolution^[1] of the Court of Appeals in CA-G.R. CV No. 66451 (1) granting the motion for writ of execution/writ of possession pending appeal of private respondent Second Bulacan Development Bank (SBDB) and (2) the September 20, 2000 resolution denying petitioner's motion for reconsideration.

On April 30, 1999, SBDB filed an amended *ex-parte* petition for issuance of writ of possession over a parcel of land^[2] purchased by SBDB in a public auction held on August 26, 1999. It was raffled to Branch 148 of the Regional Trial Court (RTC) of Makati City and docketed as Civil Case No. 99-443.

The *ex-parte* petition alleged that petitioners, spouses Constantino Espiridion and Remedios Espiridion and spouses Renato Ramos and Erlinda Ramos, mortgaged the subject property to SBDB as security for a P4,200,000 loan. They failed to comply with the terms and conditions of the mortgage, hence, SBDB extrajudicially foreclosed the property. SBDB subsequently acquired the property as the lone bidder in the public auction held on August 26, 1997. Petitioners failed to redeem the property within the one-year redemption period. As a consequence, ownership of the property was consolidated in the name of SBDB.

Petitioners anchored their defense on the alleged nullity of the extrajudicial foreclosure sale. They claimed that SBDB failed to comply with several requirements of extrajudicial foreclosure: no application for extrajudicial foreclosure was filed with the office of the clerk of court of the RTC of Makati City; the docket fees were not paid and no raffle of the publication of the notice of foreclosure sale was made.

The trial court declared that it could not rule on the propriety or validity of the foreclosure sale and, as such, presumed that the extrajudicial foreclosure sale was done in a regular manner. It only resolved the issue of SBDB's entitlement to a writ of possession. Invoking the rule that the purchaser in a foreclosure sale of mortgaged property is entitled to a writ of possession and that it is ministerial on the court to issue such writ upon *ex-parte* petition by the purchaser, the court *a quo* granted SBDB's petition.

Aggrieved, petitioners filed a notice of appeal and elevated the case to the Court of