

THIRD DIVISION

[G.R. No. 121943, March 24, 2003]

CHINA BANKING CORPORATION, PETITIONER, VS. SPOUSES OSCAR AND LOLITA ORDINARIO, RESPONDENTS.

D E C I S I O N

SANDOVAL-GUTIERREZ, J.:

For our resolution is the petition for review on *certiorari* of the Decision and Resolution of the Court of Appeals in CA-G.R. CV No. 40953 dated March 20, 1995 and September 6, 1995, respectively.^[1]

Records show that, on various dates, petitioner China Banking Corporation granted three (3) loans in the total sum of P27,353,000.00 to TransAmerican Sales and Exposition, Inc. (TransAmerican) owned and controlled by spouses Jesus and Lorelie Garcia. The loans were secured by real estate mortgages constituted by Jesus Garcia (with the consent of his wife) on his forty-five (45) parcels of land covered by TCT Nos. 7289 to 7291, 7613 to 7615, 7617, 7618, and 7621 to 7657, all of the Registry of Deeds of Quezon City. The contracts of mortgage were all registered in the same Registry.

For failure of TransAmerican to pay its loans, petitioner bank foreclosed extrajudicially the three real estate mortgages. On August 27, 1990, the mortgaged properties were sold at public auction for P38,004,205.01 to petitioner bank, being the highest bidder. On September 3, 1990, the Certificate of Sale was registered in the Registry of Deeds of Quezon City.

On October 4, 1990, petitioner bank filed with the Regional Trial Court (RTC) of Quezon City, Branch 90, an *ex parte* verified petition for issuance of a writ of possession, docketed as LRC Case No. Q-4534(90).

On April 10, 1991, the trial court issued an order granting the petition and placing petitioner bank in possession of the 45 parcels of land, thus:

"ACCORDINGLY, upon posting by the petitioner China Banking Corporation of the requisite bond in the amount of P792,000.00, let a writ of possession be issued commanding the placing in possession of said petitioner over those parcels of land covered by Transfer Certificate of Title Nos. 7289, 7290, 7291, 7613, 7614, 7615, 7617, 7618, 7621, 7622, 7623, 7624, 7625, 7626, 7627, 7628, 7629, 7630, 7631, 7632, 7633, 7634, 7635, 7636, **7637**, 7638, 7639, 7640, 7641, 7642, 7643, 7644, 7645, 7646, 7647, 7648, 7649, 7650, 7651, 7652, 7653, 7654, 7655, 7656, and 7657, all of the Registry of Deeds of Quezon City, together with all the improvements thereon, ejecting therefrom Jesus V. Garcia and all persons claiming right under him."

On July 19, 1991, petitioner posted the required surety bond which was approved by the RTC.

On August 16, 1991, spouses Oscar and Lolita Ordinario, herein respondents, filed a motion for reconsideration praying that the parcel of land with its improvement covered by TCT No. 7637 be excluded from the above order. They alleged, among others, that they are indispensable parties in the case, claiming that in November 1989, they purchased the land covered by TCT No. 7637 on which was constructed their townhouse; that the petition for a writ of possession does not bind them for lack of notice; that petitioner bank should have filed an action for recovery of possession, not an *ex-parte* petition for a writ of possession since there are parties in actual possession of the lots involved; that they filed with the Housing and Land Use Regulatory Board (HLURB) a complaint for the delivery of title and damages against petitioner bank, Jesus Garcia and TransAmerican; and that the mortgage foreclosure cannot prevail over their superior right as legitimate buyers of the area covered by TCT No. 7637.

On August 23, 1991, petitioner bank filed its opposition to respondents' motion for reconsideration. It alleged that the trial court, acting as a land registration court with limited jurisdiction, cannot pass upon the merits of respondents' motion; that respondents should have filed a separate action; that the assailed order dated April 10, 1991 directing the issuance of a writ of possession had become final; and that the proceedings, being in *rem*, bind herein respondents.

On September 21, 1992, the trial court issued an order denying respondents' motion for reconsideration.

On appeal by respondents, the Court of Appeals rendered the assailed Decision dated March 20, 1995, the dispositive portion of which reads:

"WHEREFORE, the appealed order dated September 21, 1992 of the lower court in LRC Case No. Q-4534 is SET ASIDE, and a new judgment is issued by the Court granting movants-appellants' motion for reconsideration to the effect of excluding from the lower court's orders dated April 10, 1991 and September 21, 1992, movants-appellants' property covered by Transfer Certificate of Title No. 7637 as the same property should not have been covered by the writ of possession issued in the said orders of the lower court."

Petitioner bank moved for a reconsideration but it was denied by the Appellate Court in a Resolution dated September 6, 1995.

Hence, the instant recourse, petitioner raising the following assignments of error :

"First. Respondent Court gravely erred in setting aside the order dated September 21, 1992 in LRC Case No. Q-4534 which granted the petition *ex-parte* for a writ of possession of the forty-five parcels of land to include the property covered by Transfer Certificate of Title No. 7637.

"Second. Respondent Court committed a grave error when it failed to consider that the third party referred to in the case of *PNB vs. Adil*, 118 SCRA 110, is a third party actually holding the property **adversely** to the owner.