

## FIRST DIVISION

[ G.R. No. 156295, September 23, 2003 ]

**MARCELO R. SORIANO, PETITIONER, VS. SPOUSES RICARDO  
AND ROSALINA GALIT, RESPONDENTS.**

### ***DECISION***

**YNARES-SANTIAGO, J.:**

Petitioner was issued a writ of possession in Civil Case No. 6643<sup>[1]</sup> for Sum of Money by the Regional Trial Court of Balanga, Bataan, Branch 1. The writ of possession was, however, nullified by the Court of Appeals in CA-G.R. SP No. 65891<sup>[2]</sup> because it included a parcel of land which was not among those explicitly enumerated in the Certificate of Sale issued by the Deputy Sheriff, but on which stand the immovables covered by the said Certificate. Petitioner contends that the sale of these immovables necessarily encompasses the land on which they stand.

Dissatisfied, petitioner filed the instant petition for review on certiorari.

Respondent Ricardo Galit contracted a loan from petitioner Marcelo Soriano, in the total sum of P480,000.00, evidenced by four promissory notes in the amount of P120,000.00 each dated August 2, 1996;<sup>[3]</sup> August 15, 1996;<sup>[4]</sup> September 4, 1996<sup>[5]</sup> and September 14, 1996.<sup>[6]</sup> This loan was secured by a real estate mortgage over a parcel of land covered by Original Certificate of Title No. 569.<sup>[7]</sup> After he failed to pay his obligation, Soriano filed a complaint for sum of money against him with the Regional Trial Court of Balanga City, Branch 1, which was docketed as Civil Case No. 6643.<sup>[8]</sup>

Respondents, the Spouses Ricardo and Rosalina Galit, failed to file their answer. Hence, upon motion of Marcelo Soriano, the trial court declared the spouses in default and proceeded to receive evidence for petitioner Soriano *ex parte*.

On July 7, 1997, the Regional Trial Court of Balanga City, Branch 1 rendered judgment<sup>[9]</sup> in favor of petitioner Soriano, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendant ordering the latter to pay:

1. the plaintiff the amount of P350,000.00 plus 12% interest to be computed from the dates of maturity of the promissory notes until the same are fully paid;
2. the plaintiff P20,000.00, as attorney's fees; and
3. the costs of suit.

SO ORDERED.<sup>[10]</sup>

The judgment became final and executory. Accordingly, the trial court issued a writ of execution in due course, by virtue of which, Deputy Sheriff Renato E. Robles levied on the following real properties of the Galit spouses:

1. A parcel of land covered by Original Certificate of Title No. T-569 (Homestead Patent No. 14692) situated in the Bo. of Tapulac, Orani, Bataan. Bounded on the SW, along line 1-2 by Lot No. 3, Cad. 145; containing an area of THIRTY FIVE THOUSAND SEVEN HUNDRED FIFTY NINE (35,759) SQUARE METERS, more or less x x x;
2. STORE/HOUSE - CONSTRUCTED on Lot No. 1103 made of strong materials G.I. roofing situated at Centro I, Orani, Bataan, x x x containing an area of 30 sq. meters, more or less x x x (constructed on TCT No. T40785);
3. BODEGA - constructed on Lot 1103, made of strong materials, G.I. roofing, situated in Centro I, Orani, Bataan, x x x with a floor area of 42.75 sq. m. more or less x x x.<sup>[11]</sup>

At the sale of the above-enumerated properties at public auction held on December 23, 1998, petitioner was the highest and only bidder with a bid price of P483,000.00. Accordingly, on February 4, 1999, Deputy Sheriff Robles issued a Certificate of Sale of Execution of Real Property,<sup>[12]</sup> which reads:

**CERTIFICATE OF SALE ON EXECUTION OF REAL PROPERTY**

TO ALL WHO MAY SEE THESE PRESENTS:

GREETINGS:

I HEREBY that (*sic*) by virtue of the writ of execution dated October 16, 1998, issued in the above-entitled case by the HON. BENJAMIN T. VIANZON, ordering the Provincial Sheriff of Bataan or her authorized Deputy Sheriff to cause to be made (*sic*) the sum of P350,000.00 plus 12% interest to be computed from the date of maturity of the promissory notes until the same are fully paid; P20,000.00 as attorney's fees plus legal expenses in the implementation of the writ of execution, the undersigned Deputy Sheriff sold at public auction on December 23, 1998 the rights and interests of defendants Sps. Ricardo and Rosalina Galit, to the plaintiff Marcelo Soriano, the highest and only bidder for the amount of FOUR HNDRED EIGHTY THREE THOUSAND PESOS (P483,000.00, Philippine Currency), the following real estate properties more particularly described as follows :

**ORIGINAL CERTIFICATE OF TITLE NO. T-569**

A parcel of land (Homestead Patent No. 14692) situated in the Bo. of Tapulac, Orani, Bataan, x x x. Bounded on the SW., along line 1-2 by Lot No. 3, Cad. 145, containing an area of THIRTY FIVE THOUSAND SEVEN HUNDRED FIFTY NINE (35,759) SQUARE METERS, more or less x x x

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STOREHOUSE – constructed on Lot 1103, made of strong materials G.I. roofing situated at Centro I, Orani, Bataan x x x containing an area of 30 sq. meters, more or less x x (constructed on TCT No. 40785)

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BODEGA – constructed on Lot 1103, made of strong materials G.I. roofing situated in Centro I, Orani, Bataan, x x x with a floor area of 42.75 sq. m. more or less x x x

IT IS FURTHER CERTIFIED, that the aforesaid highest and lone bidder, Marcelo Soriano, being the plaintiff did not pay to the Provincial Sheriff of Bataan the amount of P483,000.00, the sale price of the above-described property which amount was credited to partial/full satisfaction of the judgment embodied in the writ of execution.

The period of redemption of the above described real properties together with all the improvements thereon will expire One (1) year from and after the registration of this Certificate of Sale with the Register of Deeds.

This Certificate of Sheriff's Sale is issued to the highest and lone bidder, Marcelo Soriano, under guarantees prescribed by law.

Balanga, Bataan, February 4, 1999.

On April 23, 1999, petitioner caused the registration of the "Certificate of Sale on Execution of Real Property" with the Registry of Deeds.

The said Certificate of Sale registered with the Register of Deeds includes at the dorsal portion thereof the following entry, not found in the Certificate of Sale on file with Deputy Sheriff Renato E. Robles:<sup>[13]</sup>

**ORIGINAL CERTIFICATE OF TITLE NO. T-40785**

A parcel of land (Lot No. 1103 of the Cadastral Survey of Orani) , with the improvements thereon, situated in the Municipality of Orani, Bounded on the NE; by Calle P. Gomez; on the E. by Lot No. 1104; on the SE by Calle Washington; and on the W. by Lot 4102, containing an area of ONE HUNDRED THIRTY NINE (139) SQUARE METERS, more or less. All points referred to are indicated on the plan; bearing true; declination 0 deg. 40'E., date of survey, February 191-March 1920.

On February 23, 2001, ten months from the time the Certificate of Sale on Execution was registered with the Registry of Deeds, petitioner moved<sup>[14]</sup> for the issuance of a writ of possession. He averred that the one-year period of redemption had elapsed without the respondents having redeemed the properties sold at public auction; thus, the sale of said properties had already become final. He also argued that after the lapse of the redemption period, the titles to the properties should be considered, for all legal intents and purposes, in his name and favor.<sup>[15]</sup>

On June 4, 2001, the Regional Trial Court of Balanga City, Branch 1 granted the motion for issuance of writ of possession.<sup>[16]</sup> Subsequently, on July 18, 2001, a writ of possession<sup>[17]</sup> was issued in petitioner's favor which reads:

**WRIT OF POSSESSION**

Mr. Renato E. Robles  
Deputy Sheriff  
RTC, Br. 1, Balanga City

Greetings :

WHEREAS on February 3, 2001, the counsel for plaintiff filed Motion for the Issuance of Writ of Possession;

WHEREAS on June 4, 2001, this court issued an order granting the issuance of the Writ of Possession;

WHEREFORE, you are hereby commanded to place the herein plaintiff Marcelo Soriano in possession of the property involved in this case situated (*sic*) more particularly described as:

1. STORE HOUSE constructed on Lot No. 1103 situated at Centro 1, Orani, Bataan covered by TCT No. 40785;
2. BODEGA constructed on Lot No. 1103 with an area of 42.75 square meters under Tax Declaration No. 86 situated at Centro 1, Orani, Bataan;
3. Original Certificate of Title No. 40785 with an area of 134 square meters known as Lot No. 1103 of the Cadastral Survey of Orani...

against the mortgagor/former owners Sps. Ricardo and Rosalinda (*sic*) Galit, her (*sic*) heirs, successors, assigns and all persons claiming rights and interests adverse to the petitioner and make a return of this writ every thirty (30) days from receipt hereof together with all the proceedings thereon until the same has been fully satisfied.

WITNESS THE HONORABLE BENJAMIN T. VIANZON, Presiding Judge, this 18<sup>th</sup> day of July 2001, at Balanga City.

(Sgd) GILBERT S.  
ARGONZA  
OIC

Respondents filed a petition for certiorari with the Court of Appeals, which was docketed as CA-G.R. SP No. 65891, assailing the inclusion of the parcel of land covered by Transfer Certificate of Title No. T-40785 among the list of real properties in the writ of possession.<sup>[18]</sup> Respondents argued that said property was not among those sold on execution by Deputy Sheriff Renato E. Robles as reflected in the Certificate of Sale on Execution of Real Property.

In opposition, petitioner prayed for the dismissal of the petition because respondent spouses failed to move for the reconsideration of the assailed order prior to the filing of the petition. Moreover, the proper remedy against the assailed order of the trial court is an appeal, or a motion to quash the writ of possession.

On May 13, 2002, the Court of Appeals rendered judgment as follows:

WHEREFORE, the instant petition is hereby GRANTED. Accordingly, the writ of possession issued by the Regional Trial Court of Balanga City, Branch 1, on 18 July 2001 is declared *NULL* and *VOID*.

In the event that the questioned writ of possession has already been implemented, the Deputy Sheriff of the Regional Trial Court of Balanga City, Branch 1, and private respondent Marcelo Soriano are hereby ordered to cause the redelivery of Transfer Certificate of Title No. T-40785 to the petitioners.

SO ORDERED.<sup>[19]</sup>

Aggrieved, petitioner now comes to this Court maintaining that-

- 1.) THE SPECIAL CIVIL ACTION OF CERTIORARI UNDER RULE 65 IS NOT THE PLAIN, SPEEDY AND ADEQUATE REMEDY OF THE RESPONDENTS IN ASSAILING THE WRIT OF POSSESSION ISSUED BY THE LOWER COURT BUT THERE WERE STILL OTHER REMEDIES AVAILABLE TO THEM AND WHICH WERE NOT RESORTED TO LIKE THE FILING OF A MOTION FOR RECONSIDERATION OR MOTION TO QUASH OR EVEN APPEAL.
- 2.) THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN DECLARING THE CERTIFICATE OF SALE ON EXECUTION OF REAL PROPERTY AS NULL AND VOID AND SUBSEQUENTLY THE WRIT OF POSSESSION BECAUSE THE SAME IS A PUBLIC DOCUMENT WHICH ENJOYS THE PRESUMPTION OF REGULARITY AND IT CANNOT BE OVERCOME BY A MERE STRANGE FEELING THAT SOMETHING IS AMISS ON ITS SURFACE SIMPLY BECAUSE THE TYPEWRITTEN WORDS ON THE FRONT PAGE AND AT THE DORSAL PORTION THEREOF IS DIFFERENT OR THAT IT IS UNLIKELY FOR THE SHERIFF TO USE THE DORSAL PORTION OF THE FIRST PAGE BECAUSE THE SECOND PAGE IS MERELY HALF FILLED AND THE NOTATION ON THE DORSAL PORTION COULD STILL BE MADE AT THE SECOND PAGE.

On the first ground, petitioner contends that respondents were not without remedy before the trial court. He points out that respondents could have filed a motion for reconsideration of the Order dated June 4, 1999, but they did not do so. Respondents could also have filed an appeal but they, likewise, did not do so. When the writ of possession was issued, respondents could have filed a motion to quash the writ. Again they did not. Respondents cannot now avail of the special civil action for certiorari as a substitute for these remedies. They should suffer the consequences for sleeping on their rights.