

## SECOND DIVISION

[ G.R. No. 144697, December 10, 2003 ]

**RODOLFO ALARILLA, SR., ROSARIO G. ALARILLA, RODOLFO G. ALARILLA, JR., RODERICK G. ALARILLA, RAINIER G. ALARILLA, RANDY G. ALARILLA, MA. ROSELLE G. ALARILLA-PARAYNO AND ALEJANDRO PARAYNO, JR., PETITIONERS, VS. REYNALDO C. OCAMPO, RESPONDENT.**

### DECISION

**CALLEJO, SR., J.:**

This is a petition for review on certiorari of the Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. CV No. 53559 affirming the Orders of the Regional Trial Court of Manila, Branch 4, dated February 8, 1996 and May 20, 1996 in LRC Cad. Record No. 291.

#### The Antecedents

Spouses Isidro de Guzman and Andrea E. Enriquez were the owners in fee simple of a parcel of land, with an area of 128.40 square meters located in Fabie Street, Pedro Gil, Paco, Manila, and covered by Transfer Certificate of Title No. 94754 of the Register of Deeds of Manila. The Spouses De Guzman thereafter constructed a house thereon, with postal address at No. 1526 1st Street, Fabie Estate, Pedro Gil, Paco, Manila.

On March 17, 1982, Andrea died intestate and was survived by Isidro and their daughter Rosario de Guzman, married to Rodolfo Alarilla, Sr. They executed a real estate mortgage over the property in favor of Spouses Reynaldo C. Ocampo and Josephine C. Llave as security for the payment of their loan. On July 15, 1995, Isidro de Guzman died intestate and was survived by Rosario de Guzman and her children by Rodolfo Alarilla, Sr. When the mortgagors-debtors failed to pay the loan despite demands, the Spouses Ocampo filed a petition for the extrajudicial foreclosure of the real estate mortgage with the Clerk of Court of the Regional Trial Court of Manila, who was also the *Ex-Officio* City Sheriff. The property was sold at public auction on July 13, 1994 with the Spouses Ocampo as the highest bidder for P515,430.76. The *Ex-Officio* Sheriff executed a certificate of sale over the property also on the said date. The certificate of sale was registered with the Office of the City Register of Deeds on September 2, 1994. Upon the failure to redeem the property, the Spouses Ocampo executed an affidavit of consolidation of title. Transfer Certificate of Title No. 224439 was issued to and under their names on October 3, 1995.

On October 17, 1995, Spouses Rodolfo Alarilla, Sr. and their children: Spouses Alejandro Parayno, Jr. and Ma. Roselle Alarilla, Rodolfo Alarilla, Jr., Roderick G. Alarilla, Rainier Alarilla and Randy Alarilla filed a complaint against the Spouses Ocampo and the *Ex-Officio* Sheriff with the Regional Trial Court of Manila. The

complaint, docketed as Civil Case No. 95-75769, alleged *inter alia* that (a) by virtue of the Family Code of the Philippines, the property sold at public auction was constituted as a family home; (b) Isidro de Guzman failed to liquidate the family home after the death of Andrea as required by the Family Code of the Philippines, which rendered the real estate mortgage executed in favor of the Spouses Ocampo null and void; (c) upon the demise of Isidro de Guzman on July 15, 1995, the plaintiffs depended on their parents, the Spouses Rodolfo Alarilla, Sr. for support; (d) the plaintiffs offered to redeem the property for P356,427.91 to the Spouses Reynaldo Ocampo before the lapse of the one-year redemption period, but the latter refused to accept the same; (e) the Sheriff sold the property for an amount in excess of P401,162.96, the correct amount owed the plaintiffs, thus rendering the sale null and void; (f) the plaintiffs offered to redeem the property for the correct amount due on September 1, 1995, but the defendants refused to accept the same; hence, the period for redemption had not yet expired.

The plaintiffs prayed for the issuance of a writ of preliminary injunction to enjoin the sheriff from implementing the writ of possession issued by the RTC, Branch 4. The plaintiffs, thus, prayed that after due proceedings:

WHEREFORE, and based on the foregoing premises, plaintiffs most respectfully pray that:

- A. Judgment be rendered declaring the Certificate of Sale and any Deed for that matter that is subsequently issued as null and void;
- B. The defendants be ordered to pay the plaintiffs the sum of Three Hundred Thousand Pesos, Philippine currency, plus the additional sum of P45,000.00 to answer for exemplary damage and actual expenses incurred in maintaining the suit, respectively;
- C. In said judgment, an order be issued making the injunction earlier issued permanent;
- D. Declaring also that the Family Home comprised of Lot 21 and plaintiffs' residence thereat be declared free from any encumbrances, foreclosure sale, Certificate of Sale and Definite Deed of Sale.<sup>[2]</sup>

On November 27, 1995, Reynaldo Ocampo filed a petition for a writ of possession in LRC Cad. No. 291 with the Regional Trial Court of Manila, Branch 4. There was no opposition to the petition. The petitioner adduced evidence *ex-parte* in support thereof and on February 8, 1996, the court issued an order granting the petition and a writ of possession.

The plaintiffs filed an amended complaint praying that after due proceedings, judgment be rendered in their favor, thus:

WHEREFORE, and foregoing premises considered, the plaintiffs most respectfully pray that:

- A. Judgment be rendered declaring the Certificate of Sale, the Definite Deed of Sale and the Transfer Certificate of Title No. 224439 issued

to the defendants as null and void;

- B. In [the] same judgment, an order cancelling Transfer Certificate of Title No. 224439 in the name of said defendants be issued to the Register of Deeds, City of Manila;
- C. The defendants shall be ordered also to pay the plaintiffs the damages in the total sum of FOUR HUNDRED THIRTY-SIX (P436,000.00) THOUSAND PESOS, Philippine currency;
- D. The injunction earlier issued be ordered to be permanent;
- E. In [the] said judgment, the Family Home of the plaintiffs comprised as Lot 21 and the plaintiffs' residence thereat be declared free from any encumbrances, foreclosure sale, Certificate of Sale, Definite Deed of Sale, attachment and the null and void Transfer Certificate of Title No. 224439 aforementioned and any other document that may later on be shown as affecting the same Family Home.<sup>[3]</sup>

In a parallel move, Rodolfo Alarilla, Sr. filed on March 25, 1996 in LRC Cad. No. 291 a motion to set aside the Order dated February 8, 1996 and to dismiss the petition for a writ of possession. On May 20, 1996, the court issued an Order in LRC Cad. No. 291 denying the motion. The movants appealed the order to the Court of Appeals which rendered a Decision on February 17, 2000 affirming the assailed order. The movants-appellants received a copy of the decision of the CA on March 3, 2000. On March 20, 2000, they filed a motion for the reconsideration of the decision. On August 17, 2000, the CA issued a resolution denying the motion of the appellants. The latter received a copy of the said resolution on September 4, 2000 and on September 19, 2000, the appellants, now petitioners, filed with this Court a motion for extension of thirty days within which to file a petition for review of the decision of the CA.

In their petition at bar, the petitioners assailed the decision of the CA contending that:

THE COURT OF APPEALS HAS DECIDED A QUESTION OF SUBSTANCE NOT HERETOFORE IN ACCORD WITH THE APPLICABLE DECISION OF THE SUPREME COURT PARTICULARLY IN THE INTERPRETATION OF ART. 158 OF THE FAMILY CODE IN RELATION TO ART. 153 THEREOF WHERE THE FAMILY RESIDENCE OF PETITIONERS/BENEFICIARIES IS CONSTITUTED BY OPERATION OF LAW AS FAMILY HOME.<sup>[4]</sup>

The petitioners assert that the real estate mortgage executed by the Spouses De Guzman on March 9, 1993 is null and void for failure to secure the conformity of the beneficiaries of the family home as required by Article 158 of the Family Code of the Philippines. Although the respondents are entitled to a writ of possession under Section 7 of Act No. 3135, the said provision has been repealed by the Family Code of the Philippines, as provided for in Article 211 thereof. The petitioners also contend that the petitioners cannot be ousted from the property without the respondents filing an ordinary action for the recovery of possession of the same, to give the mortgagors an opportunity to be heard not only on the issue of possession of the property but also on the obligations of the mortgagors under the real estate