

FIRST DIVISION

[G.R. No. 136365, August 16, 2001]

**SPOUSES ENRIQUE R. CAMACHO AND ANGELINA M. CAMACHO,
PETITIONERS, VS. PHILIPPINE NATIONAL BANK AND REGISTER
OF DEEDS OF TACLOBAN CITY, RESPONDENTS.**

D E C I S I O N

PARDO, J.:

Spouses Enrique R. Camacho and Angelina M. Camacho appeal *via certiorari* from the decision of the Court of Appeals^[1] that denied their petition for prohibition to enjoin the Regional Trial Court, Leyte, Tacloban City, Branch 7 from enforcing its Order^[2] granting the issuance of a writ of possession after the respondent Philippine National Bank (hereafter, PNB) posted a bond in the amount of five hundred thousand pesos (P500,000.00) in favor of petitioners.

The facts are not disputed.

On May 25, 1995, for failure of petitioners to pay their mortgage indebtedness with PNB, the Provincial Sheriff of Leyte extra-judicially foreclosed the mortgage constituted on petitioners' property covered by TCT Nos. T-33726, T-30578, T-29142, T-33725, and T-31058. At the foreclosure sale, PNB was the highest bidder. The Sheriff's Certificate of Sale, dated June 2, 1995, was duly registered with the Register of Deeds, Tacloban City, on June 16, 1995, so that petitioners had one (1) year therefrom, or until June 16, 1996, within which to redeem the foreclosed property.

On October 30, 1995, PNB, as purchaser in the foreclosure sale, filed with the Regional Trial Court, Tacloban City, Branch 7 a verified *ex-parte* petition for "a writ of possession" to enable it to gain possession of the property subject of the petition.^[3]

On March 5, 1996, the trial court issued summons requiring petitioners to file their answer to the petition.^[4] On April 16, 1996, petitioners filed their answer with counterclaim.^[5]

On September 10, 1996, the trial court issued a notice setting the hearing of the case on September 20, 1996.^[6]

On September 10, 1996, petitioners filed a Motion to Transfer date of hearing from September 20, 1996, to October 18, 1996, alleging that their counsel had a prior commitment.^[7]

On October 15, 1996, the trial court issued an order that decreed as follows:

"Considering that the applicable law on the matter renders the issuance of a Writ of Possession ministerial and imperative, the Ex-Parte Motion for Issuance of Writ of Possession is hereby GRANTED upon posting of a bond of P500,000.00 in favor of Spouses Camacho."^[8]

On November 21, 1996, petitioners filed with the Court of Appeals a petition for prohibition^[9] to enjoin the enforcement of the writ of possession and to declare the order as null and void for having been issued with grave abuse of discretion amounting to depriving petitioners of their day in court.

After due proceedings, on March 25, 1998, the Court of Appeals promulgated its decision that denied the petition for prohibition, as follows:

"WHEREFORE, foregoing considered, the present petition for prohibition is hereby DENIED.

"SO ORDERED."^[10]

In denying the petition, the Court of Appeals ruled that petitioners were not denied due process because PNB's motion for issuance of writ of possession was to be heard on two (2) dates, September 10, 1996 and October 10, 1996, but on these dates petitioners chose not to attend the hearing; that even assuming that there was denial of due process, the same was cured by the filing of a motion for reconsideration. The Court of Appeals held that the right of PNB to have possession of the subject property would not be defeated notwithstanding the pendency of a case questioning the validity of the foreclosure sale, citing *Zaballero vs. Court of Appeals*.^[11]

Hence, this petition.^[12]

The issues raised are:

- (1) Whether the decision of the Court of Appeals had attained finality, and therefore, can no longer be appealed to the Supreme Court; and
- (2) Whether PNB, after its incorporation as a private bank is entitled to a writ of possession on the property which it extra-judicially foreclosed under Act 3135, as amended, and Presidential Decree (P. D.) No. 385.

We dismiss the petition.

Admittedly, petitioners received notice of the decision sought to be appealed on April 1, 1998, and, therefore, had fifteen (15) days from April 1, 1998, or until April 16, 1998, within which to move for a reconsideration of the decision or to appeal *via* certiorari to the Supreme Court.

On April 22, 1998, or six (6) days after April 16, 1998, petitioners filed with the