

SECOND DIVISION

[G.R. No. 124582, June 16, 2000]

**REGGIE CHRISTI LIMPO, PETITIONER, VS. COURT OF APPEALS
AND VERONICA GONZALES, RESPONDENTS.**

D E C I S I O N

MENDOZA, J.:

This is a petition for review of the decision,^[1] dated January 26, 1996, of the Seventeenth Division of the Court of Appeals, dismissing for lack of merit a special civil action of *certiorari* filed by petitioner to set aside the decision of the Regional Trial Court, Branch 11, Malolos, Bulacan, which granted private respondent's ex parte petition for the issuance of a writ of possession.

The following are the facts:

Petitioner Reggie Christi S. Limpo (Regina Christi Schaetzchen Limpo) and Bong Diaz (Maria Lourdes Gamir Diaz) were acquitted of nine counts of violation of Batas Pambansa Blg. 22, in Criminal Case Nos. 9638-M to 9646-M. She and her co-accused, Bong Diaz, and Leonarda Mariano y Bernardo, were likewise acquitted of seven counts of estafa, in Criminal Case Nos. 9647-M to 9653-M. But petitioner and Diaz jointly were held severally liable to private respondent Veronica Gonzales, complainant in the two criminal cases, in the total amount of P275,000.00, plus interests at the legal rate computed from the date of the first demand, or on November 19, 1985, until the amount was fully paid, in the decision rendered October 28, 1991 by the Regional Trial Court, Branch 12, Malolos, Bulacan.

The decision became final and executory on December 1, 1991. On December 29, 1992, private respondent filed a motion for the enforcement of the civil liability, whereupon the trial court issued a writ of execution. Consequently, the sheriff levied upon two (2) parcels of land registered in the name of petitioner under TCT Nos. T-30395 and T-30396 of the Register of Deeds of Bulacan. At the auction sale subsequently held, the properties were sold to private respondent as the highest bidder and a certificate of sale dated June 8, 1993 was duly issued in her favor. As petitioner failed to redeem the properties, a final deed of sale was executed in favor of private respondent on June 20, 1994.

To consolidate her ownership over the two (2) parcels of land, private respondent demanded from petitioner the surrender of her owner's copy of TCT Nos. T-30395 and T-30396. Petitioner, however, failed to do so, whereupon private respondent filed a petition under §107 of P.D. No. 1529 (Property Registration Decree),^[2] to compel petitioner to surrender her owner's duplicate certificates of title. The petition was docketed as LRC Case No. P-292-M and assigned to Branch 21 of the court.

The proceedings in that case are stated in the decision rendered on November 10, 1994, thus:

On October 26, 1994, this Petition was set for hearing and the petitioner thru counsel presented the judicial requirements of this Court. Marked in evidence are: the Order dated September 22, 1994 setting this petition for hearing on October 26, 1994 marked as Exhibit `A'; the registry return card showing receipt of the said Order by the Land Registration Authority marked as Exhibit `A-1' and stamp receipt of the Office of the Solicitor General marked as Exhibit `A-2'; stamp receipt of the Office of the Register of Deeds of Malolos, Bulacan marked as Exhibit `A-1'; and the Certificate of Posting marked as Exhibit `B'. Likewise marked is the Order setting the continuation of hearing of this petition to November 4, 1994 as Exhibit `C' and the receipt of the notice to respondent Reggie Christi Limpo was hereto marked as Exhibit `C-1'.

Despite Reggie Limpo's receipt however, no opposition was filed prompting the Court to enter an Order of general default and allowing the presentation of ex parte evidence for the petitioner on November 7, 1994. (Underscoring supplied)

On the basis of these documents, judgment was rendered by the court as follows:

WHEREFORE, finding the evidence adduced by the herein petitioner to be sufficient to warrant the relief prayed for under the aforesaid law, the respondent Reggie Christi Limpo is hereby directed to surrender the said owner's duplicate copies of TCT No. T-30395 and T-30396 to the Register of Deeds at Malolos, Bulacan. In the event that she failed or refused to do so, the said public officer is hereby ordered to cancel or annul the same and in lieu thereof, issue new copies of certificates of title in the name of herein petitioner, Veronica R. Gonzales, with the proper notations as provided by law.

SO ORDERED.^[3]

No motion for reconsideration nor appeal having been filed by petitioner within the reglementary period, the decision became final and executory. Consequently, on December 16, 1994, pursuant to the order of RTC Branch 21, the Register of Deeds of Bulacan cancelled TCT Nos. T-30395 and T-30396 in the name of petitioner and, in lieu thereof, issued TCT Nos. T-62002 and T-62003 in the name of private respondent.

On March 29, 1995, because of petitioner's refusal to vacate the premises, private respondent filed a petition for issuance of a writ of possession. The petition, which was docketed as LRC Case No. P-123-95, was assigned to Branch 11 of the trial court. It was subsequently substituted by an amended ex parte petition for issuance of a writ of possession. Private respondent alleged that pursuant to Rule 39, §35 of the Rules of Court, she was entitled to possession of the properties.

On April 27, 1995, the trial court granted ex parte private respondent's amended petition for issuance of a writ of possession and, on May 26, 1995, a writ of possession was issued commanding the sheriff to place private respondent in possession of the properties in question.

On June 19, 1995, petitioner filed an urgent motion to stop the sheriff from implementing the writ of possession. She prayed that, after notice and hearing, the order of April 27, 1995 and the writ of possession issued pursuant to it be set aside. Petitioner alleged that she had never been furnished a copy of private respondent's petition for the issuance of a writ of possession, nor given a notice of hearing concerning the same and, consequently, she was deprived of due process. Hence, the court did not acquire jurisdiction over her and had no authority to issue a writ of possession under Rule 39, §35.

On July 21, 1995, the court denied petitioner's motion for lack of merit. On September 5, 1995, it denied petitioner's motion for reconsideration and directed the issuance of an alias writ of possession.

Petitioner, thereupon filed on September 29, 1995 a petition for *certiorari* in the Court of Appeals and obtained from it a writ of preliminary injunction enjoining the enforcement of the alias writ of possession until further orders. She reiterated her contention that RTC Branch 11 had no jurisdiction to issue a writ of possession *ex parte* under Rule 39, §35 of the Rules of Court. She argued that such writ could be issued *ex parte* only in connection with an extrajudicial foreclosure of mortgage under Act No. 3135, §7, as amended. For this reason, she asked the appellate court to set aside the trial court's order dated April 27, 1995 granting *ex parte* private respondent's amended petition for a writ of possession, including the writ of possession and the alias writ issued pursuant thereto; the order dated July 21, 1995 denying petitioner's urgent omnibus motion; and the order dated September 5, 1995, denying petitioner's motion for reconsideration.

On January 26, 1996, the Court of Appeals rendered its decision, now the subject of this petition for review on *certiorari*, dismissing petitioner's petition for *certiorari* and, on April 8, 1996, it denied reconsideration. Hence, this petition.

The question for decision is whether a writ of possession may be issued *ex parte* under Rule 39, §35 of the Rules of Court.

Petitioner contends that in the absence of any complaint filed with it and a decision duly rendered by it, RTC Branch 11 had no jurisdiction to issue a writ of possession on the basis of an *ex parte* petition filed by private respondent. She argues that such may be issued *ex parte* only in cases of an extrajudicial foreclosure of mortgage pursuant to Act No. 3135, §7, as amended. She points out that private respondent should have filed the amended *ex parte* petition before Branch 12 the same court where Criminal Case Nos. 9638-M to 9653-M was filed, citing the case of *Kaw v. Anunciacion*^[4] where it was ruled that even in the case wherein the party is held liable or the case is adversely decided against the party, an *ex-parte* motion is not allowed.

The petition has no merit.

First. Petitioner is right that, as a matter of strict procedure, the writ of possession should have been sought in Branch 12 of the RTC as an incident of the execution of its decision. Moreover, it should have been sought by mere motion and not in the form of an independent action in which summons should be issued and the defendant required to file his answer.

However, what was filed as a petition for issuance of a writ of possession was in substance merely a motion, as private respondent actually sought just the execution of the final decision rendered in her favor. Such motion could be made *ex parte*. Indeed, petitioner has not asserted any defense to private respondent's motion. All she says is that because the proceedings were *ex parte*, she was deprived of her right to be heard.

However, no practical benefit can be derived by setting aside the order of the court granting *ex parte* a writ of possession. On the other hand, private respondent's right to possession over the property is clear and is based on her right of ownership as purchaser of the properties in the auction sale.

Rule 39, §35 of the Rules of Court provides:

Deed and possession to be given at expiration of redemption period. By whom executed or given. - If no redemption be made within twelve (12) months after the sale, the purchaser, or his assignee, is entitled to a conveyance and possession of the property; or, if so redeemed, whenever sixty (60) days have elapsed and no other redemption has been made, and notice thereof given, and the time for redemption has expired, the last redemptioner, or his assignee, is entitled to the conveyance and possession; but in all cases the judgment debtor shall have the entire period of twelve (12) months from the date of the sale to redeem the property. The deed shall be executed by the officer making the sale or by his successor in office, and in the latter case shall have the same validity, as though the officer making the sale had continued in office and executed it.

Upon the execution and delivery of said deed, the purchaser, or redemptioner, or his assignee, shall be substituted to and acquire all the right, title, interest and claim of the judgment debtor to the property as of the time of the levy, except as against the judgment debtor in possession, in which case the substitution shall be effective as of the date of the deed. The possession of the property shall be given to the purchaser or last redemptioner by the same officer unless a third party is actually holding the property adversely to the judgment debtor.

In the instant case, private respondent acquired the property after the levy on execution and sale of the property at public auction. No procedural infirmity attended these proceedings. As the Court of Appeals noted:

The mandate under Section 35 of Rule 39, *supra*, is unmistakable: if no redemption of the property auctioned is made within twelve (12) months after the sale, the purchaser "is entitled to a conveyance and possession of the property," which possession "shall be given to the purchaser" except when a third party with an interest adverse to the judgment debtor is actually holding the same.

Here, it is not disputed that the 12-month period within which Limpo may exercise her right of redemption had long expired without any redemption having been effected. Neither is it disputed that a final deed of sale following the expiration of said period had been executed by the