

EIGHTH DIVISION

[CA-G.R. CV No. 93047, March 30, 2015]

RCBC SAVINGS BANK, PETITIONER-APPELLEE, VS. FE B. ZULUETA AND DENNIS B. VILLACORTA, RESPONDENTS-APPELLANTS.

DECISION

LANTION, J.A.C., J.:

Before Us is an Appeal filed by Respondents-Appellants Fe B. Zulueta and Dennis B. Villacorta (Respondents-Appellants) assailing the Decision^[1] dated 30 July 2008 rendered by the Regional Trial Court (RTC), Branch 201 of Las Piñas City in LRC No. LP-07-0025. The decretal portion of the challenged Decision reads:^[2]

WHEREFORE, premises considered, the petition is hereby GRANTED, As (sic) prayed for, let a writ of possession be issued addressed to the Clerk of Court of the Regional Trial Court of Las Piñas City as Ex-Officio Sheriff or her duly authorized representative for her to place petitioner RCBC SAVING (sic) BANK in possession of the parcel of land covered by Transfer Certificate of Title No. T-103774 of the Registry of Deeds of Las Piñas City.

SO ORDERED.

THE FACTS

On 14 April 2000, Respondents-Appellants obtained a loan in the amount of one million three hundred fifty thousand pesos (P1,350,000.00) from Petitioner-Appellee RCBC Savings Bank (Petitioner-Appellee).^[3] As a security for the transaction, Respondents-Appellants executed a real estate mortgage over a parcel of land (subject property) covered by Transfer Certificate of Title (TCT) T-75101.^[4] It was agreed by the parties that in the event that Respondents-Appellants breached any of their obligations in accordance with their loan, Petitioner-Appellee may extrajudicially foreclose the mortgage.^[5]

Subsequently, Respondents-Appellants defaulted in the payment of their obligations, which prompted Petitioner-Appellee to institute extrajudicial foreclosure proceedings against the mortgaged property.^[6] Ultimately, the said property was sold via a public auction held on 15 September 2003, with Petitioner-Appellee as the highest bidder therein.^[7] Consequently, a Certificate of Sale was issued to Petitioner-Appellee and the same was registered with the Register of Deeds of Las Piñas City on 07 September 2005.^[8]

On 21 February 2007, Petitioner-Appellee filed an *Ex-Parte* Petition for Writ of

Possession before the RTC.^[9] Petitioner-Appellee alleged that, after it registered the aforesaid Certificate of Sale,^[10] the redemption period lapsed without Respondents-Appellants having successfully redeemed the property. Further, Petitioner-Appellee pointed out that it obtained title over the subject property, under TCT No. T-103774,^[11] and that, despite having sent Respondents-Appellants a notice to vacate, the latter did not heed the same.^[12] Thus, Petitioner-Appellee prayed for the issuance of a writ of possession in its favor.

On 22 May 2007, Atty. Jose R. Zulueta (Intervenor) filed an Urgent Motion to Intervene with Motion for Consolidation and Opposition to the Issuance of Writ of Possession^[13] before the RTC. Intervenor opposed the writ of possession sought by Petitioner-Appellee alleging that his wife and stepson (herein Respondents-Appellants Fe B. Zulueta and Dennis B. Villacorta, respectively) obtained a loan and executed a real estate mortgage over the subject property without his consent and conformity. Intervenor claims that he will be prejudiced by the issuance of a writ of possession in favor of Petitioner-Appellee because the subject property is conjugal in nature and he is in actual possession of the same. Moreover, Intervenor claimed to have filed another case pertaining to the said property (Civil Case No. 07-0038), which is pending before a different branch of the same court. Thus, Intervenor prayed for the suspension of the proceedings for the issuance of a writ of possession until judgment is rendered in Civil Case No. 07-0038.

On 05 June 2007, Petitioner-Appellee filed an Opposition^[14] to the above Motions. Citing jurisprudence, Petitioner-Appellee pointed out that intervention is not allowed in an *ex-parte* petition for writ of possession and, thus, prayed for the denial of the Urgent Motion to Intervene with Motion for Consolidation and Opposition to the Issuance of Writ of Possession.

In an Order^[15] dated 15 June 2007, the RTC denied the aforesaid Motions of Intervenor ratiocinating that, in accordance with Act No. 3135, it is a ministerial duty on its part to issue a writ of possession to the purchaser in an extrajudicial foreclosure of mortgage.

Unsatisfied, Intervenor filed a Motion for Reconsideration^[16] of the above Order. Essentially, Intervenor submitted that the rule cited by the RTC admits of an exception, wherein a writ of possession cannot be enforced as against a third person in actual possession of the property and who is a stranger to the foreclosure proceedings in which the *ex-parte* writ of possession is applied for.

Following the filing of a responsive pleading by Petitioner-Appellee, the RTC issued an Order^[17] dated 22 October 2007 denying Intervenor's Motion for Reconsideration and setting the hearing for the reception of Petitioner-Appellee's evidence on 15 January 2008.

After due proceedings, on 30 July 2008, the RTC rendered the assailed Decision granting Petitioner-Appellee's petition for the issuance of a writ of possession. The RTC found that more than one (1) year had lapsed since the subject property was sold at a public auction and that Respondents-Appellants have failed to redeem the same. The said court further noted that Petitioner-Appellee had obtained title over the subject property as evidenced by TCT No. T-103774. As such, since Petitioner-

Appellee had become the undisputed, absolute, and registered owner of the subject property, the RTC decreed that the former is entitled to the issuance of a writ of possession.^[18]

On 26 August 2008, Intervenor filed Motion for Leave to File Second Motion for Intervention and Consolidation with Alternative Motion for Allowance of Intervention and/or Deferment of Issuance of Writ of Possession,^[19] but the same was denied by the RTC in an Order^[20] dated 18 September 2008.

On 16 September 2008, Respondents-Appellants filed a Motion for Reconsideration^[21] of the questioned Decision and, subsequently, filed a Supplemental Motion^[22] on 23 January 2009. Respondents-Appellants averred, *inter alia*, that the sale by Petitioner-Appellee of the subject property to a third person makes the latter an indispensable party to the case. Since Petitioner-Appellee did not join the third party buyer to the action, the dismissal of the petition is warranted for non-joinder of an indispensable party.

However, in an Order^[23] dated 02 February 2009, the RTC denied the Motion for Reconsideration for the reason that the challenged Decision had already become final and executory.

Aggrieved, on 13 February 2009, Respondents-Appellants filed a Joint Notice of Appeal^[24] and a Joint Record on Appeal.^[25]

Hence, this Appeal.

ISSUES

Respondents-Appellants, including Intervenor, raise the following issues in their Consolidated Appellants' Brief:^[26]

- I. When appellant was able to file a timely motion for reconsideration, since it received the Decision on September 1, 2008 and filed for reconsideration on September 16, 2008, can the Decision of July 30, 2008 be correctly declared to have become final and executory?
- II. When appellant files a Supplemental Motion (to the Motion for Reconsideration) while the move for reconsideration is undecided, calling the attention of the lower court to appellee's failure to implead an indispensable third party buyer to the Property, can this motion, which could have led to the dismissal of the case for failure to join an indispensable party, be properly dismissed by the lower court for the reason that its Decision has (sic) become final and executory?
- III. When appellee failed to establish evidence or show by competent evidence that the redemption period had expired and it failed to establish such other evidence showing its right to possession, can it be given a writ of possession by the lower court?

IV. When intervention is sought by an applicant intervenor in the proceedings below on the ground that he is holding possession of the property adversely against the judgment debtor but such intervention is denied by the lower court, can this point that possession by a third person of the property serves (sic) to deny grant of writ to appellee be taken up on appeal even if applicant intervenor is not a party in this appeal?

OUR RULING

Before delving into the substantive issues, this Court deems it necessary to resolve relevant procedural matters raised by Respondents-Appellants.

Respondents-Appellants contend that they had timely filed a motion for reconsideration of the challenged Decision of the RTC dated 30 July 2008 within the fifteen (15) day period provided in the *Rules*.^[27] As such, the court *a quo* erred when it denied their motion for reconsideration on the ground that the said Decision had already become final and executory.^[28]

We agree.

The records show that Respondents-Appellants received a copy of the assailed Decision on 01 September 2008.^[29] Conformably with Section 1, Rule 37 of the *Rules of Court*, Respondents-Appellants had fifteen (15) days therefrom or until 16 September 2008 within which to file a motion for reconsideration.^[30] True enough, Respondents-Appellants filed their Motion for Reconsideration on 16 September 2008, which is within the fifteen (15) day reglementary period.^[31] Thus, since a motion for reconsideration was timely filed, it was erroneous for the court *a quo* to rule that its Decision dated 30 July 2008 had already attained finality.

Respondents-Appellants further point out that, during the course of the proceedings, the subject property was sold by Petitioner-Appellee to a third party buyer, but the latter was not made a party to the suit. By virtue thereof, the third party buyer is an indispensable party as any decision would affect his or her rights. As such, Respondents-Appellants opine that the RTC erred in not dismissing the petition for failure to join an indispensable party.^[32]

Respondents-Appellants' arguments are misplaced.

The non-joinder of the alleged indispensable party does not *ipso facto* merit the dismissal of Petitioner-Appellee's petition. It is settled under the *Rules* and jurisprudence that the misjoinder or non-joinder of indispensable parties is not a ground for dismissal of an action.^[33] As stated by the Supreme Court in *Limos v. Sps. Odonos*, "[p]arties may be added by order of the court on motion of the party or on its own initiative at any stage of the action and/or such times as are just. It is only when the plaintiff refuses to implead an indispensable party despite the order of the court, that the latter may dismiss the complaint."^[34] Moreover, the records are bereft of any such order having been issued by the RTC directing Petitioner-Appellee to join the supposed third party buyer. Thus, the RTC was correct in not

dismissing Petitioner-Appellee's case for non-joinder of an indispensable party.

Having disposed of the foregoing procedural matters, resolution of the substantive issues is in order.

Essentially, the crux of the instant controversy rests upon the answer to the following query: Is Petitioner-Appellee entitled to the issuance of a writ of possession?

We answer in the affirmative.

Act No. 3135 provides that in cases of extrajudicial sale of a property subject to a real estate mortgage, the mortgagor or his/her successor-in-interest may redeem the said property within one (1) year from the date the certificate of sale is registered with the register of deeds.^[35] During the redemption period, the purchaser in a foreclosure sale may secure a writ of possession pursuant to Section 7 of Act No. 3135;^[36] the purchaser may also be issued a writ of possession upon the expiration of the same period. In the latter scenario, jurisprudence holds that the right of the purchaser to the possession of the foreclosed property becomes absolute, the basis therefor is the purchaser's ownership of the property.^[37] Thus, the mere filing of an *ex-parte* motion for the issuance of a writ of possession is sufficient because possession becomes an absolute right of the purchaser as the confirmed owner.^[38]

At bench, the records show that Petitioner-Appellee was the highest bidder at the foreclosure sale of the subject property held on 15 September 2003^[39] and, by virtue thereof, was subsequently issued a Certificate of Sale.^[40] Petitioner-Appellee then registered the said Certificate with the Register of Deeds of Las Piñas City on 07 September 2005.^[41] Pursuant to Act No. 3135 and jurisprudence, Respondents-Appellants had one (1) year therefrom or until 08 September 2006 within which to redeem the subject property. However, the said period lapsed without Respondents-Appellants having exercised their right of redemption. Consequently, Petitioner-Appellee acquired an absolute right to the writ of possession. Bolstering Petitioner-Appellee's right to the subject property is the fact that, at the time it filed its *ex-parte* petition for writ of possession before the court *a quo* on 21 February 2007, Petitioner-Appellee had obtained title to the subject property in its own name as evidenced by TCT No. T-103774.^[42] Verily, Petitioner-Appellee, as the owner of the said property, is clearly entitled to the possession thereof. We quote *Chu v. Laqui, viz.*^[43]

In the present case, the certificate of sale of the foreclosed property was annotated on TCT No. 22990 on 7 June 2002. The redemption period thus lapsed on 7 June 2003, one year from the registration of the sale. When private respondent applied for the issuance of a writ of possession on 18 August 2004, the redemption period had long lapsed. Since the foreclosed property was not redeemed within one year from the registration of the extrajudicial foreclosure sale, private respondent had acquired an absolute right, as purchaser, to the writ of possession. It had become the ministerial duty of the lower court to issue the writ of possession upon mere motion pursuant to Section 7 of Act No. 3135, as