

FIFTH DIVISION

[CA-G.R. SP No. 127029, March 11, 2015]

**JOSE A. BUENCONSEJO, JR. AND MA. REMIRA A. BUENCONSEJO,
PETITIONERS, VS. HON. LORNA F. CATRIS-CHUA CHENG,
PRESIDING JUDGE OF RTC-BRANCH 168, MARIKINA CITY AND
BANCO DE ORO-EPCI, INC. (NOW: BANCO DE ORO UNIBANK,
INC.), RESPONDENTS.**

DECISION

TIJAM, J.:

Assailed in this *Petition*^[1] for *Certiorari, Prohibition and Mandamus* under Rule 65 of the Revised Rules of Court is the Order^[2] dated March 7, 2012 and Amended Order^[3] dated March 7, 2012^[4] ("assailed Orders") of the Regional Trial Court of Marikina City, Branch 168, in LRC Case No. 2008-1039-MK entitled, "*In Re: Petition for the Issuance of Writ of Possession over the Properties covered by Transfer of Certificates of Title No. 492044 and 492045*^[5] of the Registry of Deeds for Marikina City in the name of Banco de Oro-EPCI, Inc., Banco de Oro-EPCI, Inc., Petitioner". The assailed Orders granted Private Respondent's motion for issuance of a writ of possession, and denied Petitioners' claim third party claim on the subject properties.

The facts of the case are as follows:

On July 28, 2006, First GPL Development Corporation ("GPL"), through Spouses Gregorio and Imelda Arroyo ("Spouses Arroyo"), obtained a loan from Private Respondent in the amount of Php5,800,000.00^[6] secured by a *Mortgage Loan Agreement*^[7] dated July 25, 2006 covering the properties described in TCT No. 466054 and TCT No. 466070 (subject properties).^[8]

Due to the failure of GPL to pay the obligation, the bank foreclosed the mortgage and sold the properties at a public auction.^[9]

During the public auction conducted on October 17, 2007, the subject properties were awarded to Private Respondent, as the highest bidder. Private Respondent was issued the corresponding Certificate of Sale,^[10] which was annotated on the title of the subject properties on January 28, 2008.^[11]

Upon the expiration of redemption period, the Private Respondent consolidated ownership over the subject properties pursuant to Section 47^[12] of the General Banking Law. Hence, GBL's TCTs covering the subject properties were cancelled and new ones were issued in the name of Private Respondent.^[13]

In a *Letter*^[14] dated September 15, 2008, Private Respondent demanded that

Spouses Arroyo, and all persons claiming rights under them vacate the subject properties.

Private Respondent, on October 16, 2008, filed a *Petition*^[15] for the issuance of a writ of possession in the RTC of Marikina City, Branch 168, docketed as LRC Case No. 2008-1039-MK.

On May 26, 2009, Petitioners filed a *Manifestation with Opposition to Petition for Issuance of Writ of Possession over the Properties covered by TCT No. 492044 and 492045 of the Registry of Deeds for Marikina City in the name of Banco de Oro-EPCI, Inc.*^[16] In their Manifestation, Petitioners alleged that they are the former registered owners of the subject properties and that GPL, through fraudulent machinations of its President, Gregorio Arroyo, was able to register the subject properties under GPL's name. Due to the fraud employed by Arroyo, there are pending cases against GPL and Spouses Arroyo with the RTC of Marikina City, Branch 156 and the Office of the City Prosecutor of Marikina City; one case was a Civil Case No. 06-1155-MK for Rescission of Memorandum of Agreement, Annulment of Deed of Absolute Sale, Annulment of TCT No. 466070 and 466054 and Reconveyance of Titles with Damages, while the other was a criminal case, docketed as I.S. No. 06-2865 for Estafa committed by a Syndicate/Large Scale Estafa. Petitioners accordingly prayed that the issuance of a writ of possession in favor of Private Respondent be temporarily suspended pending resolution of the cases filed against GPL and Spouses Arroyo.

In an Order dated September 9, 2009, the trial court denied Petitioners' opposition stating that any question on the validity of mortgage or foreclosure is not sufficient to forestall the implementation of a writ of possession.^[17]

On March 28, 2011, the trial court rendered a Decision granting the petition for writ of possession in favor of Private Respondent.^[18]

On October 27, 2009, Petitioners filed a *Motion for Reconsideration with Manifestation of Third Party Claim.*^[19]

The trial court denied Petitioners' motion in its first March 7, 2012 Order.^[20] The trial court found that Petitioners are not the "third parties" which the law seeks to protect under Sec. 16 of Rule 39 of the Rules of Court, as the said rule only refers to properties levied pursuant to a writ of execution. The court further stated that the proper procedure was for Petitioners to execute an affidavit of title to the property or right to possession thereof. Hence, the trial court ordered the issuance of the writ of possession pursuant to its March 11, 2011 Order. The trial court issued an Amended Order^[21] dated March 7, 2012, correcting its earlier order, to reflect that it is issuing the writ of possession in accordance with its March 28, 2011 Decision.

On June 4, 2012, Petitioners filed an *Affidavit of Third Party Claim over the Properties covered by TCT No. 492044 and 492045 of the Registry of Deeds for Marikina City in the name of Banco de Oro-EPCI, Inc.*^[22]

On September 28, 2012, the trial court issued an Order noting Petitioners' Affidavit.^[23]

On October 12, 2012, the court sheriff served Petitioners a Notice to Vacate.^[24]

Hence this *Petition* raising the following issues:

"I

THE PUBLIC RESPONDENT JUDGE COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ISSUING THE WRIT OF POSSESSION AGAINST THE PETITIONERS KNOWING THAT PETITIONERS WERE NOT PARTIES IN THE EARLIER FORECLOSURE SUIT DECIDED IN FAVOR OF BANCO DE ORO UNIBANK, INC. AND THUS CANNOT BE BOUND BY THE WRIT OF POSSESSION IN IMPLEMENTING THE SAID DECISION.

II

THE PUBLIC RESPONDENT JUDGE COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ISSUING THE WRIT OF POSSESSION AGAINST THE PETITIONERS DESPITE THE FACT THAT THE PROPERTY SUBJECT OF THE FORECLOSURE SUIT WAS THE FAMILY HOME OF THE PETITIONERS AND THUS SHOULD BE CONSIDERED AS ONE IN THE IMPLEMENTATION OF THE WRIT OF POSSESSION"

The petition is meritorious.

The sole issue for resolution in this case is whether the issuance of a writ of possession over the subject properties was proper.

It is true that the buyer in a foreclosure sale becomes the absolute owner of the property if it is not redeemed within one year from registration of the sale and title is consolidated in his name. "As the confirmed owner, the purchaser's right to possession becomes absolute. There is even no need for him to post a bond, and it becomes the ministerial duty of the courts," upon application and proof of title, to issue a Writ of Possession to place him in possession. This rule is clear from the language of Section 33, Rule 39 of the Rules of Court. The same provision of the Rules, however, provides as an exception that when a third party is actually holding the property adversely to the judgment debtor, the duty of the court to issue a Writ of Possession ceases to be ministerial.^[25] Thus:

SEC. 33. *Deed and possession to be given at expiration of redemption period; by whom executed or given.* — If no redemption be made within one (1) year from the date of the registration of the certificate of sale, the purchaser 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 is entitled to the conveyance and possession; but in all cases the judgment obligor shall have the entire period of one (1) year from the date of the registration 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