

FORMER NINTH DIVISION

[CA-G.R. SP No. 95899, June 23, 2014]

ARCELIE B. PARMAN, PETITIONER, VS. CITY TRUST REALTY CORPORATION (NOW BANK OF THE PHILIPPINE ISLANDS) AND HON. FORTUNITO L. MADRONA IN HIS CAPACITY AS PRESIDING JUDGE OF BRANCH 274 OF PARAÑAQUE CITY AND JEFFREY SALES IN HIS CAPACITY AS BRANCH SHERIFF OF RTC BRANCH 274 RESPONDENTS.

DECISION

CASTILLO, M., J.:

This Petition for Annulment of Final Order^[1] under Rule 47 of the Revised Rules of Court, with an application for the issuance of temporary restraining order (TRO) and/or preliminary injunction, seeks to annul the Order^[2] dated November 3, 2000 which ordered the issuance of a writ of possession, rendered by the Regional Trial Court (RTC), Branch 274, Parañaque City, in the case docketed as Land Registration Case (LRC) No. 00-0049. It likewise seeks to nullify the Certificate of Sale^[3] dated August 13, 1993^[4] and prays that the writ of possession and extra-judicial foreclosure be declared null and void.^[5]

The antecedent facts are as follows:

On December 5, 1991, petitioner Arcelie B. Parman and her husband, Adan H. Parman, executed a real estate mortgage^[6] over their property, including all the improvements thereon, covered by Transfer Certificate of Title (TCT) No. 58076 with an area of Two Hundred Forty Square Meters (240 sq.m.), in favor of Citytrust Banking Corporation, to secure the payment of their bank loan in the amount of Eight Hundred Thousand Pesos (P800,000.00). On December 6, 1991, spouses Parman executed a promissory note^[7] for the foregoing loan, which was payable in thirty-six (36) consecutive monthly installments with interest.

Sometime in 1991, the spouses began residing in the subject property, which is located at No. 31 Honduras Street, Betterliving Subdivision, Parañaque City. On October 7, 1992, Citytrust Unibanking Group sent a letter^[8] to the aforementioned address, informing petitioner Parman that the check dated September 25, 1992 which she issued was returned due to insufficiency of funds. On February 12, 1993, Citytrust Banking Corporation filed an application for the extra-judicial foreclosure of the mortgaged property.^[9] On March 29, 1993, a public auction was held and the subject property was sold for the amount of One Million Twenty Eight Thousand Pesos (P1,028,000.00) to herein private respondent Citytrust Realty Corporation which was the highest bidder. On August 13, 1993, a Certificate of Sale^[10] was issued to the latter and the same was registered on September 15, 1993. Prior to the expiration of the one (1) year redemption period, particularly on August 30,

1994, the petitioner paid to Citytrust Banking Corporation the amount of Three Hundred Eighty Three Thousand Seven Hundred Eighty Seven Pesos (P383,787.00), leaving a balance of Nine Hundred Sixty Thousand Five Hundred Sixty Nine and 44/100 Pesos (P960,569.44).^[11] Due to the petitioner's failure to redeem the subject property, an Affidavit of Consolidation^[12] and TCT No. 139818^[13] were issued in favor of private respondent Citytrust Realty Corporation. On April 6, 1996, the private respondent filed with the RTC, Branch 274 of Parañaque City, an application for the issuance of a writ of possession.^[14] On April 15, 1996, which was approximately three (3) years after the expiration of the redemption period, Citytrust Insurance Brokers wrote a letter^[15] to the petitioner's husband. The letter requested for a confirmation of the renewal of the fire insurance coverage pertaining to the subject property. On April 6, 2000, the private respondent filed a petition praying for the issuance of a writ of possession.^[16] On November 3, 2000, then RTC Judge Amelita G. Tolentino and now Associate Justice of this Court, issued the assailed Order^[17], the dispositive portion of which reads:

WHEREFORE, let a Writ of Possession be issued on the property known and denominated as Lot 11, Blk. 13 of the consolidation subdivision plan (LRC) Pcs-3975, being a portion of the consolidation of Psu-101654, and Lot 3, Psu-151351, LRC Rec. Nos. N-1644 and N-12793), situated in the Barrio of Wawa, Municipality of Parañaque, Province of Rizal, which is covered by Transfer Certificate of Title No. 139818 of the Registry of Deeds of Parañaque City as soon as possible.

SO ORDERED.^[18]

On November 25, 2001, the petitioner received a Notice to Vacate^[19] dated November 15, 2001. On December 3, 2001, spouses Parman filed with the RTC of Parañaque City a Complaint^[20] for Injunction with a prayer for the issuance of a TRO and preliminary injunction, but the same did not prosper since the RTC could not enjoin the act of a co-equal court.^[21] The same injunction case was filed with this Court (Special Fifth Division) but it was dismissed on July 3, 2002 since injunction was a mere auxiliary remedy and not a principal remedy.^[22] On August 8, 2006, the RTC issued an Order granting the Urgent Ex-Parte Motion for the Issuance of an Alias Writ of Possession. On August 14, 2006, an alias writ of possession^[23] and notice to vacate^[24] were issued.

Hence, this petition.

On August 29, 2006, Parman filed the instant Petition for Annulment of Final Order^[25] under Rule 47 of the Revised Rules of Court, with an application for the issuance of a TRO and/or preliminary injunction. On September 22, 2006, this Court (Ninth Division) issued a Resolution^[26] denying the petitioner's application for a TRO. On September 26, 2007, Citytrust Banking Corporation sold the subject property to Spouses Liador and Maria Lea Gatapia.^[27] On November 10, 2006, private respondent Citytrust Realty Corporation filed its Comment on the petition in the form of an Answer^[28]. It later on filed an Amended Answer^[29] on January 18, 2007. On April 10, 2008, this Court (Former Ninth Division) issued a Resolution^[30], referring the instant case to the RTC of Parañaque City for pre-trial and reception of

evidence, in accordance with Section 6^[31], Rule 47 of the Revised Rules of Court. Mediation was conducted but the same was not successful, based on the Mediator's Report dated December 5, 2008^[32]. After the pre-trial was terminated on June 11, 2009,^[33] the parties proceeded to trial. The petitioner's husband, Adan Parman, testified. On August 13, 2012, the petitioner filed her Formal Offer of Evidence^[34], to wit:

- Exhibit - Writ of Possession dated November 3, 2000^[35];
"A"
- Exhibit - Certificate of Sale dated August 13, 1993^[36];
"B"
- Exhibit - Alias Writ of Possession issued by the RTC, Branch 274,
"C" Parañaque City^[37];
- Exhibit - Notice to Vacate dated August 14, 2006^[38];
"D"
- Exhibit - TCT No. 58076 under the name of spouses Parman;^[39]
"E"
- Exhibit - Notice to Vacate dated November 15, 2001;^[40]
"F"
- Exhibit - Letter dated October 7, 1992 sent by Citytrust Banking
"G" Corporation to the petitioner;^[41]
- Exhibit - Certificate of Sale dated August 13, 1993;^[42]
"H"
- Exhibit - Receipt/Statement of Account, dated June 7, 1996,
"I" which Citytrust Banking Corporation issued to Adan
Parman;^[43] and
- Exhibit - Letter sent by Citytrust Insurance Brokers Corporation,
"J" a subsidiary corporation of the private respondent, to
spouses Parman notifying the latter of the automatic
renewal of the fire insurance coverage pertaining to the
subject property.^[44]

The private respondent did not present any witness.^[45] On December 9, 2013, the private respondent filed its Formal Offer of Evidence^[46], as follows:

- Exhibit - Real Estate Mortgage dated December 5, 1991;^[47]
"1"
- Exhibit - Promissory Note executed by spouses Parman;^[48]
"2"
- Exhibit - TCT No. 58076 in the name of spouses Parman;^[49]
"3"
- Exhibit - Affidavit of Consolidation;^[50]
"4"
- Exhibit - TCT No. 139818 in the name of private respondent
"5" Citytrust Realty Corporation;^[51]
- Exhibits - Demand Letters, both dated January 7, 200 (sic),
"6" and addressed to spouses Parman;^[52]
"7"
- Exhibit - Complaint for injunction, dated December 3, 2001, filed

- "8" by spouses Parman with the RTC and docketed as Civil Case No. 01-0431;^[53]
- Exhibit - private respondent Citytrust Realty Corporation's
"9" Answer to Complaint;^[54]
- Exhibit - Decision, dated July 3, 2002, rendered by this Court
"10" (Special Fifth Division), pertaining to the Petition filed by spouses Parman against Citytrust Realty Corporation and Hon. Amelita G. Tolentino, docketed as CA-G.R. SP No. 68150;^[55]
- Exhibit - Petition, dated December 13, 2001, filed by spouses
"11" Parman against Citytrust Realty Corporation and Hon. Amelita G. Tolentino, docketed as CA-G.R. SP No. 68150;
^[56]
- Exhibit - Citytrust Realty Corporation's Comment on the Petition,
"12" dated February 1, 2002, in the case docketed as CA-G.R. SP No. 68150;^[57]
- Exhibit - Final Sheriff's Return dated July 4, 2003, showing that
"13" the implementation of the writ of possession^[58] dated October 10, 2001 was not satisfied;^[59] and
- Exhibit - Entry of Judgment for the case docketed as CA-G.R. SP
"14" No. 68150, showing that the Decision dated July 3, 2002 has become final and executory on July 26, 2002.^[60]

The petitioner alleges that the instant Petition for Annulment of Final Order is grounded on lack of jurisdiction and extrinsic fraud. The petitioner was prevented from participating in the foreclosure proceedings. The notices were not sent to the correct address of the petitioner. There were no publication and posting of notices which are both required in an extra-judicial foreclosure of mortgage. The petitioner was denied the right to due process.^[61] The lack of notices and publication violated Section 3^[62] of Act No. 3135, as amended by Act 4118. The petitioner verified with the Office of the Sheriff of RTC Makati and she was informed that there was no record of any notice or publication pertaining to the extra-judicial foreclosure. The private respondent claims that the required posting of notices and publication were complied with but it failed to attach any paper to its pleadings to prove its alleged compliance.^[63] The Supreme Court has ruled that failure to publish a notice of the auction sale constitutes a jurisdictional defect which renders the sale invalid.^[64] Thus, the extra-judicial foreclosure is a nullity and did not entitle the private respondent to a writ of possession. Aside from the aforementioned jurisdictional defect, the private respondent also defrauded the petitioner by luring her to pay the amount of Three Hundred Eighty Three Thousand Seven Hundred Eighty Seven Pesos (P383,787.00) despite the fact that the bank has already initiated a foreclosure proceeding. On August 30, 1994, the petitioner paid the said amount in good faith. The payment was made prior to the expiration of the redemption period which was on September 15, 1994.^[65] The petitioner also received from Citytrust Insurance Brokers a letter of renewal of the fire insurance coverage in 1996 which was after the expiration of the redemption period. This gave the petitioner the impression that she was still a mortgagor in good standing. Hence, she paid the insurance premiums. Admittedly, the issuance of a writ of possession is ministerial. However, the petitioner avers that it cannot be acquired by an entity which is not a legal purchaser at a public auction. There was no valid extra-judicial foreclosure due

to fraud and absence of notices and/or publication. Thus, the writ of possession is likewise invalid.^[66]

On the other hand, in its Amended Answer^[67], private respondent Citytrust Realty Corporation alleges that the petitioner has the burden of proving that the auction sale was null and void due to the alleged lack of posting and/or publication of the notice of the foreclosure sale. The Ex-Officio Sherrif who conducted the foreclosure sale and the Executive Judge who signed the certificate of sale are presumed to have performed their duties.^[68] It is not necessary to personally notify the mortgagors of the auction sale. The sale was legal and valid. The petitioner admitted having made a partial payment in the amount of Three Hundred Eighty Seven Thousand Seven Hundred Eighty Seven Pesos (P387,787.00) out of the sum of Nine Hundred Sixty Thousand Five Hundred Sixty Nine and 44/100 Pesos (P960,569.44) for the full redemption of the subject property.^[69] Thus, she is deemed to have prior knowledge of the foreclosure proceedings. The petitioner failed to redeem the subject property prior to the expiration of the redemption period. Thereafter, the title thereto was consolidated in the private respondent's name, thus, entitling the latter to the issuance of a writ of possession and the implementation of the assailed Order. The petitioner is in estoppel. She has no cause of action in the filing of the present petition. Assuming that she has a cause of action, the same has already prescribed.^[70] The instant petition should have been instituted within four (4) years from the time she had knowledge of the assailed RTC Order (Annex "A" of the instant petition) and of the foreclosure sale, or from the time she made a partial payment on August 30, 1994. Any question on the validity of the foreclosure sale cannot be used as a ground for opposing the issuance of a writ of possession or invalidating the assailed Order. The petitioner filed a Complaint^[71] with the RTC which was docketed as Civil Case No. 01-0431. It must be noted that the petitioner's causes of action as stated in her Complaint are the same causes of action which she raised in the present petition. The aforementioned Complaint, where she prayed for the issuance of an injunction, was dismissed. The petitioner also filed a petition with this Court which was docketed as CA-G.R. SP No. 68150^[72], where she prayed for the issuance of a TRO/writ of preliminary injunction in connection with the execution of the writ of possession and eviction of spouses Parman from the subject property, based on the same grounds which she raised in the instant petition.^[73] The foregoing petition (CA-G.R. SP No. 68150) was dismissed by this Court in its Decision dated July 3, 2002.^[74] Thus, the instant petition is barred by res judicata. The petitioner has no legal capacity to file the present petition since she was not joined by her spouse. She is also guilty of forum shopping. The petitioner failed to indicate in the Verification and Certification of Non-Forum Shopping the fact that she filed the aforementioned complaint with the RTC and petition with this Court. The instant petition was filed to harass and/or mulct money from the private respondent.^[75]

We deny the petition.

Firstly, the petitioner availed of the wrong remedy. The present petition for annulment of final order under Rule 47 of the Revised Rules of Court may only be availed of in specific instances. Under Section 1 of Rule 47, a party may resort to the foregoing remedy only when "the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no