

FOURTH DIVISION

[CA-G.R. CV No. 97751, November 19, 2014]

**RURAL BANK OF BALUNGAO, INC., PETITIONER-APPELLEE, VS.
ALICIA ALMONTE CAYABYAB, RESPONDENT-APPELLANT.**

DECISION

CARANDANG, J.:

Before this Court is an appeal seeking to annul and set aside the Order dated 4 May 2010 of the Regional Trial Court Branch 42 of Dagupan City and the Order dated 16 May 2011 which denied appellant's Motion for Reconsideration.

The facts are as follows:

Petitioner-appellee Rural Bank of Balungao, Inc. has acquired a parcel of land (subject property) by purchase at the foreclosure sale held on 18 May 2006. For failure of the mortgagor, herein respondent-appellant Alicia Cayabyab to redeem the property within the legal period of redemption, appellee was able to consolidate its ownership to the subject property. Consequently, appellee caused the issuance of TCT No. 86252 in its name. However, despite the consolidation and transfer of title in appellee's name, the previous owner refused to vacate the subject property despite repeated demands.

On 27 August 2009, appellee filed the Petition *a quo* for the issuance of a Writ of Possession. On 6 October 2009, appellant filed an Opposition to the Petition *a quo* contending that appellee has no legal right to possess the subject property because the foreclosure proceeding is null and void due to the absence of publication of the Notice of the Extrajudicial Foreclosure.

On 4 May 2010, the trial court issued the assailed order the dispositive portion of which states:

"WHEREFORE, the petition for the issuance of a writ of possession is hereby given due course. Let a writ of possession be issued ordering the City Sheriff of Dagupan City to place petitioner in possession of the subject parcel of land covered by TCT No. 86252, now registered in the name of the petitioner, with all the improvements thereon.

SO ORDERED."

In granting the Petition *a quo*, the trial court ratiocinated that the issuance of a writ of possession in favor of the purchaser in a foreclosure sale is a ministerial duty of the court. It also ruled that public officers in a foreclosure proceeding enjoy the

presumption of regularity in the performance of their duties.

In the meantime, herein appellant filed a complaint against the appellee seeking the nullification of the foreclosure proceedings which was docketed as Civil Case No. 2009-0102-D. Prior to her receipt of the 4 May 2010 Order, appellant filed on 20 May 2010 a Motion to Consolidate the Petition *a quo* and Civil Case No. 2009-0102-D.

On 2 June 2002, appellant filed a Motion for Reconsideration to the 4 May 2010 Order. However, it was denied by the trial court on 16 May 2011.

Hence, the present appeal.

ISSUES

1. WHETHER OR NOT the Court *a quo* committed reversible error in granting the Writ of Possession in favor of respondent Rural (sic) of Balungao, Inc., against Alicia Almonte Cayabyab on the property subject matter of this case.
2. WHETHER OR NOT the court *a quo* committed reversible error in denying the consolidation of SP. Proc No. 2009-0104-D and Civil case No. 2010-0102-D;
3. WHETHER OR NOT the court *a quo* committed reversible error in applying the presumption of regularity of proceedings enjoined (sic) by the public officers in the subject foreclosure proceedings despite the patent nullity of the subject foreclosure proceedings;
4. WHETHER OR NOT the court *a quo* committed reversible error in denying the reconsideration of the order dated May 4, 2010.^[1]

RULING

The instant appeal has no merit.

In *Santiago v. Merchants Rural Bank of Talavera, Inc.*,^[2] the Supreme Court defined the nature of a petition for a writ of possession:

“The proceeding in a petition for a writ of possession is *ex parte* and summary in nature. It is a judicial proceeding brought for the benefit of one party only and without notice by the court to any person adverse of interest. It is a proceeding wherein relief is granted without giving the person against whom the relief is sought an opportunity to be heard.”