

FOURH DIVISION

[CA-G.R. SP NO. 77084, August 31, 2006]

DOMINGA TINIO, PETITIONER, VS. UNITED COCONUT PLANTERS BANK (UCPB) AND JUDGE BENJAMIN T. ANTONIO, RESPONDENTS.

D E C I S I O N

BARRIOS, J.:

Alleging that this was rendered with grave abuse of discretion by the respondent Hon. Benjamin Antonio, Presiding Judge of Branch 170 of the Regional Trial Court of Malabon City (or RTC), the petitioner Dominga Tinio (or Tinio) pleads that the Order dated May 7, 2003 issued in LRC Case No. 767-MN, be set aside.

The respondent United Coconut Planters Bank (or UCPB) had filed against Tinio before the RTC a suit entitled *In Re: In the Matter of the Issuance of a Writ of Possession for Extrajudicial(ly) Foreclosed Real Property Duly Covered and Evidence by TCT No. 172540, Registry of Deeds for Malabon, Metro Manila, in the name of Dominga Tinio*. After an *ex-parte* hearing an Order dated August 23, 2002 came forth disposing that:

Finding the petition to be sufficient in form and substance and duly substantiated by the evidence on record, the same is hereby granted.

WHEREFORE, let a writ of possession be issued accordingly. (*p. 13, rollo*)

The concomitant writ of possession was issued on September 30, 2002 and a notice to vacate on December 20, 2002.

On January 20, 2003 Tinio filed an *Urgent Motion for Reconsideration (To Set Aside the Order dated August 23, 2002)*, asseverating that they were not notified of UCPB's petition. Accordingly, they were prevented from interposing any objection on the petition and from assailing the validity of the foreclosure sale.

Citing Republic Act No. 8791 or the General Banking Act of 2000 which provides that the issuance of a writ of possession is *ex-parte* in nature, and so not susceptible of intervention and/or opposition from any party, UCPB opposed Tinio's *Urgent Motion for Reconsideration*. The alleged irregularity in the foreclosure sale is immaterial and irrelevant in a petition for issuance of a writ of possession and cannot be raised as a ground to oppose this.

After an exchange of written arguments on the motion, the RTC handed down the Order dated April 14, 2003 decreeing that:

WHEREFORE, in the light of the foregoing, the Motion for Reconsideration is hereby denied.

SO ORDERED. (p. 34, rollo)

Defeated, Tinio filed a Notice of Appeal but the RTC denied this in the assailed Order dated May 7, 2003 holding that:

Section 1 of Rule 41 provides:

Section 1. Subject of appeal. – An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

No appeal may be taken from:

x x x x x x x x x x x x

(c) An interlocutory order;

x x x x x x x x x x x x

Mortgagor ought to know that the Order of this Court dated April 14, 2003 is merely interlocutory, and therefore not appealable.

WHEREFORE, premises considered, the Notice of Appeal is hereby denied due course for being contrary to the rule.

SO ORDERED. (p. 37, rollo)

Tinio thus sought relief via this petition for certiorari and mandamus theorizing that the respondent Honorable Judge acted without jurisdiction in denying and not giving due course to petitioner's Notice of Appeal (p. 5, rollo).

Tinio asseverates that the Order dated April 14, 2003 denying her motion for reconsideration is a final order hence there is no procedural bar for her to appeal this. UCPB on the other hand posits that review of the trial court's Order of April 14, 2003 cannot be made citing Section 9 of Rule 37 and Section 1 Rule 41. Tinio's Notice of Appeal referred only to the Order of the trial court denying the motion for reconsideration and not the order granting the writ of possession as well. UCPB asserts that Tinio undertook a procedural misstep and the RTC thus acted well within its discretion in denying the Notice of Appeal.

Indeed the Order granting the writ of possession was merely interlocutory from which no appeal could be taken (*City of Manila vs. Serrano*, G. R. No. 142304, June 20, 2001). In this UCPB is correct. But then there is a specific and special remedy prescribed under Section 8 of Act No. 3135 for those against whom a writ of possession is issued. This remedy is to file a petition to set aside the sale and the cancellation of the writ of possession. The aggrieved party may thereafter appeal from any disposition by the court on the matter (*Santiago vs. Merchants Rural Bank of Talavera*, G. R. No. 147820, March 18, 2005). It is so provided that:

Sec. 8. Setting aside of sale and writ of possession. — The debtor may, in the proceedings in which possession was requested, but not later than