

## NINTH DIVISION

[ CA-G.R. SP. NO. 94459, August 31, 2006 ]

**ENGR. LOURDES ICBAN, PETITIONER, VS. LEONCIO S. SOLIDUM,  
THE HON. PRESIDING JUDGE AND THE HON. SHERIFF REGIONAL  
TRIAL COURT OF MAKATI CITY, BRANCH 135, RESPONDENTS.**

### D E C I S I O N

**REYES, JR., A. J.:**

In this *Petition for Certiorari* under Rule 65 of the 1997 Rules of civil Procedure, petitioner seeks to nullify and set aside the 29 March 2006 *Decision*<sup>[1]</sup> of the Makati Regional Trial Court, Branch 135, in Civil Case No. 98-2789 which dismissed petitioner's application for the issuance of a Writ of Temporary Restraining Order.

The antecedent facts:

It appears that petitioner Lourdes Icban conventionally bought the subject parcel of land (TCT No. P-2467) from a certain Luis Almario who was allegedly authorized by the registered owner, Matilde Alava.

The transaction was evidenced by the *Kasulatan ng Bilihang Patuluyan*<sup>[2]</sup> dated 26 January 1998, which was however, not registered as required by the Property Registration Decree (P.D. 1529).

Records on hand further reveals that same parcel of land was the subject of a public auction held on 16 June 2000 wherein private respondent Leoncio S. Solidum was adjudged as the highest bidder and winner. Consequently, a *Certificate of Sale*<sup>[3]</sup> was issued on even date by the Sheriff of RTC Makati City.

On 20 July 2005, private respondent Leoncio S. Solidum interposed a *Motion for Issuance of Writ of Possession*,<sup>[4]</sup> specifically alleging, to quote:

"xxx    xxx    xxx.

1. By virtue of the writ of execution issued by this Honorable Court and pursuant to the Order dated 26 January 2000, the Sheriff levied on the mortgaged real property together with the improvement existing thereon, situated at Pansol, Pila, Laguna, registered in the name of Matilde Alava under Original Certificate of Title No. P-2467, and sold the same at public auction to the highest bidder plaintiff-movant to satisfy the judgment in the above-entitled case. Certificate of sale was issued by the Sheriff to the plaintiff-movant xxx;

2. After the expiration of the one (1) year period of redemption, there being none, the Sheriff issued an Officer's Final Deed of sale, xxx;
3. Upon presentation to the Register of Deeds for the Province of Laguna the Officer's Final Deed of Sale and the Court Order dated May 17, 2004, a new title was issued in the name of the plaintiff-movant under TCT No. T-235358, xxx;
4. It appears that Lourdes Icban, xxx are occupying and/or claiming possession on a certain portion of the land;

xxx." (*Rollo*, pp. 16-17)

In resolving the *Motion*, the RTC Makati City issued a *Writ of Possession*,<sup>[5]</sup> commanding the Sheriff to place herein private respondent in possession of the contested lot. The whole text of the *Writ* reads, *viz*:

"WHEREAS, on 22 July 2005, a Motion for Issuance of Writ of Possession was filed by plaintiff in the above-entitled case.

WHEREAS, after due hearing on 24 November 2005 an Order was issued by this Court for the issuance of a Writ of Possession over the property covered by Transfer Certificate of Title No. T-235358 of the register of Deeds of Laguna.

NOW THEREFORE, you are hereby commanded to place plaintiff-movant in possession of said land covered by TCT No. 235358 of the Register of Deeds of Laguna situated at Brgy. Pansol, Pila, Laguna and to eject there from Lourdes Icban xxx and all other persons claiming rights therein." (*Rollo*, p. 19)

Pursuant to this *Writ of Possession*, a *Notice to Vacate*<sup>[6]</sup> was issued by the trial court on 17 January 2006, ordering petitioner to vacate the premises within ten (10) days from the receipt thereof.

To stop the promulgation of the *Notice to Vacate*, petitioner filed an *Urgent Motion For Issuance Of Temporary Restraining Order And/Or A Writ Of Preventive Injunction*<sup>[7]</sup> which was denied by the trial court when it rendered the herein assailed Order, disposing:

"The Sheriff was merely complying with the Writ of Possession issued by this Court on December 1, 2004. Enjoining the Sheriff from enforcing the writ issued by this Court would in effect be enjoining the Court itself from implementing the writ which the Court itself issued.

WHEREFORE, for lack of merit, the motion is hereby DENIED.

SO ORDERED."

Without filing a motion for reconsideration, petitioner elevated the case before this Tribunal through the present *Petition for Certiorari*, theorizing: