

THIRTEENTH DIVISION

[CA-G.R. SP NO. 92795, September 27, 2006]

**SPS. DANILO DEL ROSARIO AND YOLANDA DEL ROSARIO,
PETITIONERS, VS. HON. AUGUSTO T. GUTIERREZ, IN HIS
CAPACITY AS ACTING PRESIDING JUDGE OF THE REGIONAL
TRIAL COURT OF BINANGONAN, RIZAL, BRANCH 70, AND
UNITED OVERSEAS BANK PHILIPPINES, RESPONDENTS.**

D E C I S I O N

CRUZ, J.:

As security for the loan obtained by spouses Danilo and Yolanda del Rosario (or "petitioners") from Westmont Bank, now United Overseas Bank Philippines (or "private respondent"), in April 1997, petitioners mortgaged to the latter two parcels of land (or "foreclosed properties") situated at Angono, Rizal and covered by Transfer Certificates of Title (or "TCT") Nos. 613458 and 629493.

Because of petitioners' default, private respondent caused the extrajudicial foreclosure of the aforesaid mortgage on July 28, 1998. Being the highest bidder, private respondent was issued a certificate of sale covering the foreclosed properties and the same was registered in the Registry of Deeds on March 11, 1999.

As petitioners failed to redeem the foreclosed properties within the redemption period, private respondent consolidated its title therein, for which it was issued TCT Nos. 683404 and 683405 on November 11, 2003.

On March 3, 2004, private respondent filed a petition for issuance of a writ of possession of the foreclosed properties in the Regional Trial Court of Rizal (Binangonan, Branch 70), presided over by Hon. Augusto T. Gutierrez (or "respondent judge").

On June 10, 2004, petitioners filed a "Motion for Leave to Oppose/File/Admit/Opposition to the *Ex Parte* Petition for Writ of Possession" (or "motion for leave to file opposition, etc."). In the projected opposition, petitioners claimed that private respondent prevented them from redeeming the foreclosed properties and did not comply with the requirements of foreclosure proceedings.

Petitioners' motion for leave to file opposition, etc. was denied by respondent judge in an order dated June 18, 2004. Their motion for reconsideration met the same fate per order dated August 3, 2004.

On September 14, 2005, a decision was rendered by respondent judge granting private respondent's petition for issuance of writ of possession. Unfazed, petitioners filed a notice of appeal of said decision.

On October 12, 2005, respondent judge issued an order declaring petitioners' notice of appeal "expunged from the records". Petitioners' motion for reconsideration was denied per order dated November 16, 2005.

Hence, this special civil action for certiorari, prohibition and mandamus, with an application for preliminary injunction, ascribing grave abuse of discretion to respondent judge for issuing the decision dated September 14, 2005 and order dated October 12, 2005. The action is predicated on the grounds that:

1. "THE DECISION OF THE LOWER COURT IS NULL AND VOID AS PETITIONERS WERE NOT HEARD AND GIVEN FAIR OPPORTUNITY TO PRESENT CONTRARY EVIDENCE";
2. "THE NOTICE OF APPEAL WHICH WAS EARLIER FILED AND ACCEPTED BY THE LOWER COURT MUST HAVE BEEN GIVEN DUE COURSE AND SHOULD NOT HAVE BEEN EXPUNGED FROM THE RECORDS";
3. "THE LOWER COURT SHOULD BE ENJOINED FROM (sic) FURTHER IMPLEMENTING THE WRIT OF POSSESSION WHICH IT PREVIOUSLY ISSUED AGAINST PETITIONERS";
4. "THE LOWER COURT SHOULD BE PROHIBITED FROM FURTHER PROCEEDING WITH THE CASE AND INSTEAD ELEVATE THE RECORDS OF THIS CASE TO THIS HONORABLE COURT";
5. "THE RESPONDENT BANK SHOULD BE ENJOINED FROM PROCEEDING TO TAKE POSSESSION THE (sic) SUBJECT PROPERTIES OF THE PETITIONERS WITHOUT FIRST BEING HEARD AND PRESENT THEIR EVIDENCES (sic)"; and
6. "THE PUBLIC RESPONDENT COURT RENDERED THE ASSAILED ORDER WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR IN EXCESS OF JURISDICTION AND THERE IS NO APPEAL NOR PLAIN OR SPEEDY REMEDY AVAILABLE IN THE ORDINARY COURSE OF THE LAW."

The petition is devoid of merit.

Petitioners assert that the issuance of the writ of possession by respondent judge was premature, improper, irregular and unwarranted; that the foreclosure proceedings did not comply with the procedural requirements on notice of auction sale, publication, notice of bidding and registration proceedings; and that their substantive and procedural rights were violated because private respondent arbitrarily prevented them from redeeming the foreclosed properties.

Under Sec. 7 of Act No. 3135, as amended by Act No. 4118, a writ of possession may be issued either within the one-year redemption period, upon filing of a bond, or after the lapse of the redemption period, without need of a bond (Ong vs. Court of Appeals, 333 SCRA 189).

It is undisputed that ownership of the foreclosed properties was consolidated in private respondent upon failure of petitioners to redeem the same within the redemption period. In fact, TCT Nos. 683404 and 683405 covering the foreclosed