



Republic of the Philippines
Supreme Court
 Manila

FIRST DIVISION

JACQUELINE S. UY,
Petitioner,

G.R. No. 248140

Present:

GESMUNDO, C.J.,
Chairperson,

- versus -

HERNANDO,
ZALAMEDA,
ROSARIO, and
MARQUEZ, JJ.

3TOPS DE PHILIPPINES
ESTATE CORPORATION,
Respondent.

Promulgated:

JAN 16 2023

X-----X

DECISION

HERNANDO, J.:

This Petition for Review on *Certiorari*¹ (Petition) seeks the reversal of the January 16, 2019² and the July 1, 2019³ Resolutions of the Court of Appeals (CA/appellate court) in CA-G.R. SP No. 12168 which dismissed the Petition for *Certiorari* (with Applications for Temporary Restraining Order and/or Writ of Preliminary Injunction)⁴ filed by petitioner Jacqueline S. Uy, questioning and seeking to annul the Orders dated July 17, 2018⁵ and September 17, 2018⁶ of the Regional Trial Court (RTC/trial court) of Bacolod City, Branch 45 in Cad. Case No. 18-4069.

¹ *Rollo*, pp. 11-39 (sans annexes).

² *Id.* at 40-unpaginated. Penned by Associate Justice Emily R. Aliño-Geluz and concurred in by Associate Justices Edgardo L. Delos Santos and Marilyn B. Lagura-Yap.

³ *Id.* at 51-52. Penned by Associate Justice Emily R. Aliño-Geluz and concurred in by Associate Justices Edgardo L. Delos Santos and Marilyn B. Lagura-Yap.

⁴ *Id.* at 282-304.

⁵ *Id.* at 256-257. Penned by Presiding Judge Phoebe A. Gargantiel-Balbin.

⁶ *Id.* at 281. Penned by Presiding Judge Phoebe A. Gargantiel-Balbin.

The Antecedents

This case stemmed from an *Ex Parte* Petition⁷ (for the Issuance of a Writ of Possession under Section 7, Act No. 3135,⁸ as amended by Act No. 4118)⁹ (hereafter, *Ex Parte* Petition) dated February 20, 2018 filed by respondent 3Tops De Philippines Estate Corporation (respondent), thru its President, Oscar M. Chua, before the RTC of Bacolod City, Branch 45, which was docketed as Cad. Case No. 18-4069.

In its *Ex Parte* Petition, respondent averred that it is the registered owner of two parcels of land situated at Tindalo Avenue, Shopping Center, Barangay Villamonte, Bacolod City, Philippines, evidenced by Transfer Certificate of Title (TCT) No. 092-2014000935, covering Lot No. 7-G-6-C, with an area of 169 square meters; and TCT No. 092-2014000936, covering Lot No. 7-6-7-A, with an area of 331 square meters (collectively, subject properties). Situated on the said lots was a commercial building with Property Index No. 143-00-060-28-124.¹⁰

Respondent alleged that the subject properties were previously owned by Lucy S. Uy (Lucy), who obtained a loan from the Rizal Commercial Banking Corporation (RCBC) in 1995 and as a security, mortgaged the said properties in favor of RCBC.¹¹ In 2007, RCBC assigned all its rights and interests in the mortgage agreement to Star Two, Inc. (Star Two).¹² When Lucy defaulted in her obligation, Star Two initiated the extrajudicial foreclosure of the mortgaged properties on December 27, 2011.¹³ Upon failure by Lucy to redeem the properties, on June 6, 2013, Star Two consolidated the ownership of the same in its name, under TCT Nos. 092-2013003691 and 092-2013003692.¹⁴

Then, on January 8, 2014, Star Two sold the properties to respondent in the amount of PHP 4,700,000.00, as evidenced by a Deed of Absolute Sale. Respondent caused the titling of the subject properties in its name, including the commercial building situated thereon.¹⁵

Respondent averred that since its acquisition of the properties in 2014, it has paid the corresponding taxes on the lots and the commercial building. As proof, respondent attached the official receipts and certification from the City

⁷ Id. at 56-60.

⁸ Entitled "AN ACT TO REGULATE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL-ESTATE MORTGAGES." Approved: March 6, 1924.

⁹ Entitled "AN ACT TO AMEND ACT NUMBERED THIRTY-ONE HUNDRED AND THIRTY-FIVE, ENTITLED 'AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL-ESTATE MORTGAGES.'" Approved: December 7, 1933.

¹⁰ Id. at 56-57.

¹¹ Id. at 57.

¹² Id.

¹³ Id.

¹⁴ Id.

¹⁵ Id. at 104.

W

Treasurer evidencing payment of property taxes for previous years up to 2018.¹⁶ Respondent argued that it has satisfactorily established its entitlement to the issuance of a writ of possession, and thus, the trial court has a ministerial duty to issue the same.¹⁷ Respondent further prayed for the issuance of a writ of demolition.¹⁸

In an Order dated April 24, 2018,¹⁹ the trial court granted respondent's *Ex Parte* Petition and held that after redemption, the purchaser of the property has the right to be placed in possession thereof, and correspondingly, the court has the ministerial duty to issue the writ of possession.²⁰ Accordingly, a Writ of Possession²¹ was issued on even date commanding the *Ex-Officio* Sheriff of RTC, Bacolod City or any of his or her lawful deputies, to place respondent in possession of the properties, and to eject therefrom all adverse occupants. On May 10, 2018, a Notice to Vacate²² was issued to Lucy and all adverse occupants.

Petitioner Jacqueline S. Uy (petitioner), in the interest of her mother, Lucy, and as the then occupant of the subject properties, filed an Urgent Motion to Admit Herein Opposition (With Motion for the Honorable Court to [R]econsider [i]ts Order dated April 24, 2018, to Quash the Petitioner's [*Ex Parte*] Petition for Issuance of a Writ of Possession, and to Hold in Abeyance the Implementation of the Writ of Possession dated May 08, 2018 and the Notice to Vacate dated May 10, 2018) dated May 25, 2018 (hereafter, Urgent Motion).²³

Petitioner averred in her Urgent Motion that respondent acted in bad faith and committed forum shopping in filing the *Ex Parte* Petition considering the pendency of two other cases, *i.e.*, Civil Case No. 15-14483 and Civil Case No. 05-12643, which involve the subject properties. Civil Case No. 05-12643 involves a case for Injunction (with Accounting and Prayer for Writ of Injunction, Temporary Restraining Order and Damages) pending before the RTC of Bacolod City, Branch 53, which was filed by her mother, Lucy, essentially seeking to annul the foreclosure proceedings, and the eventual sale to respondent by Star Two, of the subject properties.²⁴ Meanwhile, Civil Case No. 15-14483 involves a case of *accion publiciana* filed by respondent against the occupants of the subject properties, which was archived, and later consolidated with Civil Case No. 05-12463, at the instance of respondent.²⁵

¹⁶ Id. at 58.

¹⁷ Id. at 58-59.

¹⁸ Id. at 59.

¹⁹ Id. at 102-105. Penned by Presiding Judge Phoebe A. Gargantiel-Balbin.

²⁰ Id. at 104.

²¹ Id. at 53-54.

²² Id. at 55.

²³ Id. at 106-125.

²⁴ Id. at 111.

²⁵ Id. at 14.

Petitioner argued that the duty of the trial court to issue a writ of possession ceased to be ministerial considering the irregularities in the foreclosure proceedings, as well as, the illegality in the titling of the subject properties by Star Two, and in its subsequent sale to respondent.²⁶ Thus, petitioner prayed for the trial court to admit her Opposition, reconsider its Order dated April 24, 2018, quash respondent's *Ex Parte* Petition, and hold in abeyance the implementation of the Writ of Possession and the Notice to Vacate pending resolution of the issues in Civil Case No. 05-12643.²⁷

Ruling of the Regional Trial Court

In its Order dated July 17, 2018,²⁸ the trial court denied petitioner's Urgent Motion, the dispositive portion of which reads:

WHEREFORE, the Urgent Motion to Admit Herein Opposition filed by Oppositor-Movant, Jacqueline S. Uy, is hereby DENIED for lack of basis and merit.

SO ORDERED.²⁹

The trial court ratiocinated that any question regarding the validity of the mortgage or its foreclosure cannot be a legal ground for refusing the issuance of a writ of possession;³⁰ that a judge to whom an application for the issuance of such writ is made need not look into the validity of the mortgage or manner of the foreclosure;³¹ and that the obligation of a court to issue an *ex parte* writ of possession in favor of the purchaser in an extrajudicial foreclosure sale ceases to be ministerial once it appears that there is a third party in possession of the property who is claiming a right adverse to that of the debtor-mortgagor, which is not the case here.³² Petitioner's Motion for Reconsideration was likewise denied in the trial court's Order dated September 17, 2018.³³

Aggrieved, petitioner filed a Petition for *Certiorari*³⁴ (with Applications for Temporary Restraining Order and/or Writ of Preliminary Injunction) dated October 10, 2018 under Rule 65 of the Rules of Court before the CA, arguing that the trial court committed grave abuse of discretion in excess of jurisdiction in whimsically denying her Urgent Motion and Motion for Reconsideration, and in sustaining its Order dated April 24, 2018 which granted the issuance of the Writ of Possession in favor of respondent.

²⁶ Id. at 118-122.

²⁷ Id. at 123-124.

²⁸ Id. at 256-257.

²⁹ Id. at 257.

³⁰ Id.

³¹ Id.

³² Id.

³³ Id. at 281.

³⁴ CA rollo, pp. 4-24.

W

Ruling of the Court of Appeals

In its January 16, 2019 Resolution,³⁵ the appellate court dismissed the *certiorari* petition, thus:

WHEREFORE, the instant petition for [*certiorari*] is hereby **DISMISSED**. Accordingly, petitioner's prayer for injunctive relief and/or temporary restraining order is deemed **DENIED**.

SO ORDERED.³⁶ (Emphasis in the original)

The appellate court declared that the proper remedy to assail an order granting a writ of possession to the purchaser of mortgaged property is an appeal in accordance with Act No. 3135, as amended;³⁷ that the buyer in a foreclosure sale becomes the absolute owner of the property purchased if it is not redeemed during the period of redemption, and as such, is entitled to the possession thereof;³⁸ that upon proper application and proof of title, the issuance of the writ of possession becomes a ministerial duty of the court;³⁹ accordingly, since the trial court need not exercise its discretion, then it can never be ascribed with grave abuse of discretion.⁴⁰ Moreover, respondent acquired all the rights and interests of its predecessor-in-interest, Star Two, and can thus, validly apply for a writ of possession *ex parte*.⁴¹ Further, the appellate court ruled that the pendency of a civil case questioning the mortgage and foreclosure is not a bar to the issuance of a writ of possession;⁴² and that respondent is not guilty of forum shopping since the *Ex Parte* Petition is non-litigious.⁴³

The CA likewise denied petitioner's motion for reconsideration⁴⁴ in its Resolution dated July 1, 2019.⁴⁵ In the said Resolution, the appellate court also noted that petitioner has already voluntarily surrendered the possession of the subject properties to respondent; thus, the relief sought by petitioner has already been rendered moot.⁴⁶

Hence, this instant petition where petitioner argues that the CA committed an error when it denied the *certiorari* petition outright on the ground

³⁵ *Rollo*, p. 40-unpaginated.

³⁶ *Id.* at unpaginated.

³⁷ *Id.* at 42.

³⁸ *Id.* at 43.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.* at unpaginated.

⁴³ *Id.*

⁴⁴ *Id.* at 44-50.

⁴⁵ *Id.* at 51-52.

⁴⁶ *Id.* at 52.

that an appeal is the proper remedy from an order granting a writ of possession;⁴⁷ when it found no grave abuse of discretion on the part of the trial court in whimsically denying her Urgent Motion and Motion for Reconsideration, and in the issuance of the Writ of Possession despite the pendency of the civil cases involving the same properties and the irregularities in the foreclosure proceedings;⁴⁸ and when it ruled that the case has already been rendered moot by the alleged voluntary surrender by petitioner of the subject properties to respondent.⁴⁹

Issues

The issues in this case can be summarized as follows:

- a) whether petitioner availed of the correct remedy from the trial court's Orders dated July 17, 2018 and September 17, 2018;
- b) whether the trial court acted with grave abuse of discretion in sustaining its April 24, 2018 Order granting the issuance of Writ of Possession, and in denying petitioner's Urgent Motion and Motion for Reconsideration; and
- c) whether the alleged voluntary surrender by petitioner of the subject properties rendered the relief sought moot.

Our Ruling

Petitioner availed of the correct remedy

Relevant for this discussion are the three orders of the trial court, to wit:

First, the Order dated April 24, 2018, granting respondent's *Ex Parte* Petition, from which the issuance of the Writ of Possession and the Notice to Vacate were based. Second, the trial court's Order dated July 17, 2018 denying petitioner's Urgent Motion; and third, the September 17, 2018 Order denying petitioner's Motion for Reconsideration.

The appellate court declared that the proper remedy to assail an order granting a writ of possession to the purchaser of mortgaged property is an appeal in accordance with Act No. 3135, as amended.⁵⁰ Meanwhile, petitioner

⁴⁷ Id. at 18-19.

⁴⁸ Id. at 19-29.

⁴⁹ Id. at 30-32.

⁵⁰ Id. at 42.

W

posits that she availed of the correct remedy of *certiorari* from the trial court's Orders dated July 17, 2018 and September 17, 2018 denying her Urgent Motion and Motion for Reconsideration, respectively, and that the remedy of appeal pursuant to Sec. 8 of Act No. 3135, as amended, is applicable only when the debtor filed a petition to cancel the sale and the writ of possession.⁵¹

In *680 Home Appliances, Inc. v. Court of Appeals*⁵² (*680 Home*) the Court clearly explained the correct application of the provisions of Sec. 8 of Act No. 3135, as amended. It decreed that Sec. 8 of Act No. 3135 finds no application when the redemption period has expired without the debtor exercising his or her right, and the purchaser in the foreclosure sale has already consolidated his or her ownership over the property and moved for the issuance of the writ of possession.⁵³ Act No. 3135 governs only the manner of the sale and redemption of the mortgaged real property in an extrajudicial foreclosure; proceedings beyond these, *i.e.*, upon the lapse of the redemption period and the consolidation of the purchaser's title, are no longer within its scope, as it is apparent from Sec. 1 thereof, which states:⁵⁴

Section 1. When a sale is made under a special power inserted in or attached to any real-estate mortgage hereafter made as security for the payment of money or the fulfillment of any other obligation, **the provisions of the following [sections] shall govern as to the manner in which the sale and redemption shall be effected**, whether or not provision for the same is made in the power.⁵⁵ (Emphasis Ours)

The Court explained that during the redemption period, the purchaser's title is merely inchoate; nonetheless, the purchaser may acquire possession of the property during the redemption period by exercising the privilege granted to him or her under Sec. 7 of Act No. 3135, which states:⁵⁶

Sec. 7. In any sale made under the provisions of this Act, **the purchaser may petition the Court of First Instance of the province or place where the property or any part thereof is situated, to give him [or her] possession thereof during the redemption period, furnishing bond** in an amount equivalent to the use of the property for a period of twelve months, **to indemnify the debtor in case it be shown that the sale was made without violating the mortgage or without complying with the requirements of this Act.** Such petition shall be made under oath and filed in form of an *ex parte* motion in the registration or cadastral proceedings if the property is registered, or in special proceedings in the case of property registered under the Mortgage Law or under section one

⁵¹ Id. at 29-30.

⁵² 744 Phil. 481 (2014).

⁵³ Id. at 491.

⁵⁴ Id. at 492.

⁵⁵ Id.

⁵⁶ Id.

hundred and ninety-four of the Administrative Code, or of any other real property encumbered with a mortgage duly registered in the office of any register of deeds in accordance with any existing law, and in each case the clerk of the court shall, upon the filing of such petition, collect the fees specified in paragraph eleven of section one hundred and fourteen of Act Numbered Four hundred and ninety-six, as amended by Act Numbered Twenty-eight hundred and sixty-six, and the court shall, upon approval of the bond, order that a writ of possession issue, addressed to the sheriff of the province in which the property is situated, who shall execute said order immediately.⁵⁷ (Emphases Ours)

The debtor-mortgagor, on the other hand, is provided the opportunity to contest the transfer of possession during the redemption period under Sec. 8 of Act No. 3135, as he or she remains to be the owner of the foreclosed property.⁵⁸ The provision states:

Sec. 8. The debtor may, in the proceedings in which possession was requested, but not later than thirty days after the purchaser was given possession, petition that the sale be set aside and the writ of possession cancelled, specifying the damages suffered by him [or her], because the mortgage was not violated or the sale was not made in accordance with the provisions hereof, and the court shall take cognizance of this petition in accordance with the summary procedure provided for in section one hundred and twelve of Act Numbered Four hundred and ninety-six; and if it finds the complaint of the debtor justified, it shall dispose in his [or her] favor of all or part of the bond furnished by the person who obtained possession. Either of the parties may appeal from the order of the judge in accordance with section fourteen of Act Numbered Four hundred and ninety-six; but the order of possession shall continue in effect during the pendency of the appeal.⁵⁹ (Emphases Ours)

The Court held that the writ of possession that the debtor may petition to set aside under Sec. 8 of Act No. 3135 undoubtedly refers to one issued pursuant to Sec. 7 of the same law “during redemption period”.⁶⁰ Further showing Secs. 7 and 8’s close relation is the bond required to be filed by the purchaser in Sec. 7 that the debtor may proceed against in Sec. 8.⁶¹ Sec. 7 states that the petition for the issuance of a writ of possession should be accompanied by a bond, which, under Sec. 8, shall “indemnify the debtor in case it be shown that the sale was made without violating the mortgage or without complying with the requirements of [Act No. 3135].”⁶² As explained by the Court, the requirement and purpose of the bond in Act No. 3135 support the position that Sec. 8 thereof is a remedy available only during the redemption period.⁶³ A bond is no longer required to be filed in support of a petition for writ of possession filed after the

⁵⁷ Id. at 492-493.

⁵⁸ Id. at 493.

⁵⁹ Id. at 494.

⁶⁰ Id.

⁶¹ Id.

⁶² Id.

⁶³ Id.

W

redemption period has expired without the mortgagor exercising his or her right of redemption.⁶⁴ If a bond is no longer required to support a writ of possession issued after the consolidation of the purchaser's ownership, then no relief can be extended to the debtor under Sec. 8 of Act No. 3135.⁶⁵ The Court further declared:

However, upon the lapse of the redemption period without the debtor exercising his [or her] right of redemption and the purchaser consolidates his [or her] titles, it becomes unnecessary to require the purchaser to assume actual possession thereof before the debtor may contest it. Possession of the land becomes an absolute right of the purchaser, as this is merely an incident of his [or her] ownership. In fact, the issuance of the writ of possession at this point becomes ministerial for the court. **The debtor contesting the purchaser's possession may no longer avail of the remedy under Section 8 of Act. No. 3135, but should pursue a separate action e.g., action for recovery of ownership, for annulment of mortgage and/or annulment of foreclosure. FSAMI's consolidation of ownership therefore makes the remedy under Section 8 of Act No. 3135 unavailable for 680 Home. 680 Home cannot assail the writ of possession by filing a petition in LRC No. M-5444.**⁶⁶ (Emphases Ours)

In the present case, it can be recalled that Lucy was not able to redeem the subject properties which prompted Star Two to cancel the mortgage titles and consolidate the same in its name in 2013. The subject properties were eventually sold to respondent who was able to transfer the titles of the same to its name in 2014. It was only on February 20, 2018 that respondent filed its *Ex Parte* Petition for the issuance of a writ of possession, which is clearly long after the redemption period has already expired. Therefore, consistent with the Court's pronouncements in *680 Home*, the remedies under Sec. 8 of Act No. 3135 find no application in the case at bar.

Procedurally, petitioner can no longer file a petition to cancel the sale or the writ of possession under Sec. 8 of Act No. 3135 since the same can only be availed against writs of possession issued during the redemption period, which is not the case here. Corollarily, the remedy of appeal under Sec. 8 of Act No. 3135 denying such petition, would not be available to petitioner. Thus, contrary to the appellate court's ruling, petitioner may not avail of the remedy of appeal from the trial court's Orders denying her Urgent Motion and Motion for Reconsideration. Her only recourse was to file a *certiorari* petition.

While the general rule is that *certiorari* will not lie as a substitute for an appeal, an exception is when it is established that no remedy by appeal lies.⁶⁷ A special petition for *certiorari* under Rule 65 of the Rules of Court is availed of when a "tribunal, board or officer exercising judicial or quasi-judicial

⁶⁴ Id. at 495.

⁶⁵ Id.

⁶⁶ Id.

⁶⁷ *Enriquez v. Rivera*, 179 Phil. 482, 486 (1979).

7

functions has acted without or in excess of its or his [or her] jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and **there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law.**⁶⁸ As the remedy of appeal under Sec. 8 of Act No. 3135 is not available to petitioner, her resort to *certiorari* from the trial court's Orders denying her Urgent Motion and Motion for Reconsideration, therefore, was not improper.

No grave abuse of discretion on the part of the trial court

Be that as it may, while petitioner availed of the correct remedy from the trial court's Orders, she nevertheless, failed to substantiate her claim of grave abuse of discretion.

Jurisprudence has settled that the remedy of *certiorari* is intended to correct errors of jurisdiction only or grave abuse of discretion amounting to lack or excess of jurisdiction.⁶⁹ Its primary purpose is to keep an inferior court within the parameters of its jurisdiction or to prevent it from committing such grave abuse of discretion amounting to lack or excess of jurisdiction.⁷⁰ "Grave abuse of discretion" implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction or, in other words, where the power is exercised in an arbitrary manner by reason of passion, prejudice, or personal hostility, and it must be so patent or gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.⁷¹

Applying the foregoing parameters, We find no such grave abuse of discretion on the part of the trial court in denying petitioner's Urgent Motion and Motion for Reconsideration, and in sustaining its issuance of the Writ of Possession in favor of respondent.

It is settled that a purchaser of properties in an extra-judicial foreclosure sale is entitled to a writ of possession even before the expiration of the period of redemption provided he or she furnishes the necessary bond.⁷² After the expiration of the period without redemption, the right of the purchaser becomes absolute.⁷³ Moreover, when the thing purchased at a foreclosure sale is in turn sold or transferred, the right to the possession thereof, along with all other rights of ownership, follows the thing sold to the new owner.⁷⁴ This was applied in

⁶⁸ RULES OF COURT, Section 1, Rule 65; emphasis supplied.

⁶⁹ *Philippine National Bank v. Spouses Perez*, 667 Phil. 450, 465 (2011), citing *Chamber of Real Estate and Builders Associations, Inc. v. The Secretary of Agrarian Reform*, 635 Phil. 283, 303 (2010).

⁷⁰ *Id.*

⁷¹ *Id.* at 466.

⁷² *Laureano v. Bormaheco, Inc.* 404 Phil. 80, 86 (2001).

⁷³ *Id.*

⁷⁴ *Spouses Gallent v. Velasquez, and Velasquez v. Spouses Gallent*, 784 Phil. 44, 61 (2016).

W

Laureano v. Bormaheco, Inc.,⁷⁵ where the properties therein were foreclosed by the Philippine National Cooperative Bank (PNCB), and later sold to Bormaheco, Inc. The Court held therein that by virtue of the sale, Bormaheco, Inc. became the new owner of the lots, and is thus, entitled to all rights and interests that its predecessor PNCB acquired, including the right to a writ of possession.

It was also explained in *Asia United Bank v. Goodland Company*⁷⁶ that courts have the ministerial duty to issue a writ of possession in favor of a buyer of a foreclosed property, *viz.*:

It is a time-honored legal precept that after the consolidation of titles in the buyer's name, for failure of the mortgagor to redeem, entitlement to a writ of possession becomes a matter of right. As the confirmed owner, the purchaser's right to possession becomes absolute. There is even no need for him to post a bond, and it is the ministerial duty of the courts to issue the same upon proper application and proof of title. To accentuate the writ's ministerial character, the Court has consistently disallowed injunction to prohibit its issuance despite a pending action for annulment of mortgage or the foreclosure itself.

The nature of an *ex parte* petition for issuance of the possessory writ under Act No. 3135 has been described as a non-litigious proceeding and summary in nature. As an *ex parte* proceeding, it is brought for the benefit of one party only, and without notice to or consent by any person adversely interested.

x x x x

The law does not require that a petition for a writ of possession be granted only after documentary and testimonial evidence shall have been offered to and admitted by the court. As long as a verified petition states the facts sufficient to entitle petitioner to the relief requested, the court shall issue the writ prayed for.⁷⁷

Applying the foregoing pronouncements in the present case, it was correct for the trial court to issue the Writ of Possession since respondent's right to possess the subject properties has become absolute by failure of the debtor-mortgagor to redeem the subject properties.

Likewise, considering the nature of an *ex parte* proceeding, the trial court acted within its authority when it refused to set for hearing petitioner's Urgent Motion, or to admit her Opposition. To be sure, no hearing is necessary prior to the issuance of a writ of possession, as it is a proceeding wherein relief is granted without giving the person against whom the relief is sought an

⁷⁵ *Supra.*

⁷⁶ 650 Phil. 174, 186 (2010).

⁷⁷ *Id.* at 185-187.

N

opportunity to be heard.⁷⁸ By its very nature, an *ex parte* petition for issuance of a writ of possession is a non-litigious proceeding.⁷⁹ It is a judicial proceeding for the enforcement of one's right of possession as purchaser in a foreclosure sale.⁸⁰ It is not an ordinary suit filed in court, by which one party sues another for the enforcement of a wrong or protection of a right, or the prevention or redress of a wrong.⁸¹ Consistent with jurisprudence, the trial court may thus proceed with or grant the *ex parte* petition for the issuance of a writ of possession, even without any participation of the debtor-mortgagor, or even when there is a pending annulment proceeding of the mortgage or foreclosure.

As declared in *BPI Family Savings Bank, Inc. v. Golden Power Diesel Sales Center, Inc.*,⁸² a pending action for annulment of mortgage or foreclosure sale does not stay the issuance of the writ of possession.⁸³ The trial court, where the application for a writ of possession is filed, need not look into the validity of the mortgage or the manner of foreclosure,⁸⁴ and the purchaser is entitled to a writ of possession without prejudice to the outcome of the pending annulment case.⁸⁵

It must be kept in mind, therefore, that the pendency of Civil Case No. 05-12643 questioning the foreclosure of the subject properties should not be a bar to the issuance of the Writ of Possession, which is a matter of right of respondent. The trial court is justified in relying on the face of respondent's titles to the subject properties, which is presumed to be valid and to have been issued in the regular performance of duties of the government offices responsible for such issuance. Of course, this is without prejudice to the outcome of Civil Case No. 05-12643. Until then, respondent enjoys the presumption of validity of its titles and the enjoyment of possession of the subject properties.

Thus, We cannot ascribe any grave abuse of discretion on the part of the trial court considering that respondent has presented a proper application for the issuance of the Writ of Possession and showed sufficient proof of its titles to, and ownership over, the Subject Properties.

Furthermore, this case fails to fall under one of the exceptions to the trial court's ministerial duty to issue an *ex parte* writ of possession. Jurisprudence

⁷⁸ *In Re: Ex Parte Petition for Issuance of Writ of Possession Philippine National Bank v. Fontanoza*, G.R. No. 213673, March 2, 2022, citing *Spouses Cabasal v. BPI Family Savings Bank, Inc.*, G.R. No. 233846, November 18, 2020.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² 654 Phil. 382, 394 (2011).

⁸³ *Id.*, citing *Fernandez v. Espinoza*, 574 Phil. 292, 307 (2008); *Idolor v. Court of Appeals*, 490 Phil. 808, 814 (2005); *Samson v. Rivera*, 472 Phil. 836, 849 (2004).

⁸⁴ *Id.*, citing *Idolor v. Court of Appeals*, *supra*.

⁸⁵ *Id.*, citing *Spouses Ong v. Court of Appeals*, 388 Phil. 857, 866-867 (2000).

dictates that this ministerial duty ceases once it appears that a third party, not the debtor-mortgagor, is in possession of the property under a claim of title adverse to that of the applicant.⁸⁶ In *China Banking Corporation v. Spouses Lozada*,⁸⁷ it was held that when the foreclosed property is in the possession of a third party holding the same adversely to the defaulting debtor-mortgagor, the issuance by the court of a writ of possession in favor of the purchaser ceases to be ministerial and may no longer be done *ex parte*.⁸⁸ For the exception to apply, however, it is not enough that the property be held by a third party, but rather the said possessor must have a claim thereto adverse to the debtor-mortgagor.⁸⁹ Specifically, to be considered in adverse possession, the third party possessor must have done so in his or her own right and not merely as a successor or transferee of the debtor-mortgagor.⁹⁰

Thus, We agree with the trial court's observation that the exception finds no application in this case since petitioner is not a possessor claiming an adverse title to the debtor-mortgagor; rather, she brought the case on behalf, or in representation of, such debtor-mortgagor. Being Lucy's daughter, she had a right consistent with that of her mother, and not adverse to it, and would not consequently warrant the application of the exception.

Finally, as correctly pointed out by the appellate court, the relief sought by petitioner: cancellation or suspension of the Writ of Possession, has already been rendered moot by her surrender of the subject properties to respondent. Having validly acquired possession of the subject properties, respondent can no longer be disturbed in its possession by mere cancellation or suspension of the implementation of the Writ of Possession. As discussed above, its right being absolute, respondent is entitled to the possession of the Subject Properties by virtue of its ownership. Petitioner's remedy would already have to be the annulment of the foreclosure and/or reconveyance of the Subject Properties.

WHEREFORE, the petition is **DENIED**. The January 19, 2019 and the July 1, 2019 Resolutions of the Court of Appeals in CA-G.R. SP No. 12168, insofar as it dismissed Jacqueline Uy's Petition for *Certiorari* (With Applications for Temporary Restraining Order and/or Writ of Preliminary Injunction) for lack of merit are **AFIRMED**.

⁸⁶ *Laureano v. Bormaheco, Inc.*, supra note 72 at 86.

⁸⁷ 579 Phil. 454, 475 (2008).

⁸⁸ Id. at 474-475.

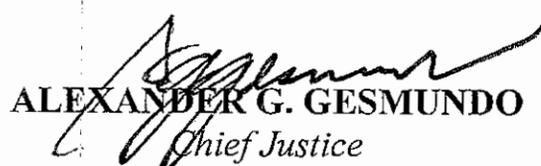
⁸⁹ Id.

⁹⁰ Id. at 478-480.

SO ORDERED.


RAMON PAUL L. HERNANDO
Associate Justice

WE CONCUR:


ALEXANDER G. GESMUNDO
Chief Justice
Chairperson


RODIL V. ZALAMEDA
Associate Justice


RICARDO R. ROSARIO
Associate Justice


JOSE MIDAS P. MARQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ALEXANDER G. GESMUNDO
Chief Justice

