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FIRST DIVISION

[G.R. No. 68878. April 8, 1986]

BANCO FILIPINO SAVINGS AND MORTGAGE BANK, *petitioner, vs.* **INTERMEDIATE APPELLATE COURT and CELESTINA S. PAHIMUTANG, assisted by her husband,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL PROCEEDINGS; FORECLOSURE OF MORTGAGE; PURCHASER ENTITLED TO WRIT OF POSSESSION DURING THE REDEMPTION PERIOD.** — In fact, under Section 7 of Act 3135 the purchaser is entitled to the possession of the property during the redemption period, provided that a proper motion has been filed, a bond approved, and no third person is involved. So had it been held in *Marcelo Steel Corp. vs. Court of Appeals*, 54 SCRA 89, 99, citing *De Gracia vs. San Jose*, 94 Phil. 623, where this Court ruled: "As may be seen, the law expressly authorizes the purchaser to petition for a writ of possession during the redemption period by filing an *ex parte* motion under oath for that purpose in the corresponding registration or cadastral proceeding in the case of property with Torrens title, and upon the filing of such motion and the approval of corresponding bond, the law also in express terms directs the court to issue the order for a writ of possession. Under the legal provisions above copied, the order for a writ of possession issues as a matter of course upon the filing of the proper motion and the approval of the corresponding bond. No discretion is left to the court. And any question regarding the regularity and validity of the sale (and the consequent cancellation of the writ) is left to be determined in a subsequent proceeding as outlined in section 8. Such question is not to be raised as a justification for opposing the issuance of the writ of possession, since, under the Act, the proceeding for this is *ex parte*."

2. **ID.; ID.; ID.; GOVERNING LAWS.** — Likewise, in the recent case of *Philippine National Bank vs. Adil*, 118 SCRA 110, 115, this Court reiterated the aforecited case when it ruled that: "Also, Section 6 of Act No. 3135, as amended by Act 4118, the law

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that regulates the methods affecting extrajudicial foreclosure of mortgage provides that in cases in which an extrajudicial sale is made, 'redemption shall be governed by the provisions of sections four hundred and sixty-four to four hundred and sixty-six, inclusive, of the Code of Civil Procedure insofar as these are not inconsistent with the provisions of this Act', (Sections 464-466 of the Code of Civil Procedure were superseded by Sections 25-27 and Section 31 of Rule 39 of the Rules of Court which in turn were replaced by Sections 29 to 31 and Section 35 of Rule 39 of the Revised Rules of Court. Section 35 which is one of the specific provisions applicable to that case at bar provides that 'If no redemption be made within twelve (12) months after the sale, the purchaser, or his assignee, is entitled to a conveyance and possession of property. x x x. The possession of the property shall be given to the purchaser or last redemptioner by the officer unless a third party is actually holding the property adversely to the judgment debtor." xxx "The rule, therefore, is that after the redemption, period has expired, the purchaser of the property has the right to be placed in possession thereof."

DECISION

PATAJO, *J.*:

This is a petition for review on *certiorari* of the decision of the Intermediate Appellate Court promulgated on July 12, 1984 setting aside the writ of possession granted to petitioner which was issued by the Regional Trial Court, National Capital Judicial Region, Branch XLI (41) at Makati.

It appears that spouses Gerardo and Celestina Pahimutang purchased a house and lot at No. 15, Istanbul Street, BF Homes III, covered by Transfer Certificate of Title No. S-15041 from Pilar Development Corporation for P139,800.00. The remaining balance of P125,700.00 was financed by petitioner through a loan contract secured by a real estate mortgage over the said house and lot. After sometime however, the spouses mortgagors failed to pay the monthly amortization of the loan. On June 30, 1982, the petitioner filed with the Provincial Sheriff of Rizal a petition for extrajudicial foreclosure of the real estate

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mortgage. At the public auction sale held on August 5, 1982, the house and lot were awarded to petitioner as the highest bidder thereof, and the certificate of sale was registered on September 21, 1982.

On January 21, 1983, petitioner filed with the Court of First Instance of Rizal (later re-assigned to the Regional Trial Court, Branch XLI at Makati), a verified petition for the issuance of a writ of possession pursuant to Section 7 of Act No. 3135. The spouses-mortgagors opposed the petition alleging that they had already paid more than the installments due as of the date of the extrajudicial foreclosure; that the foreclosure of the mortgage was improper; and that they had no notice of the same. On October 12, 1983, the trial Court issued an order directing the issuance of the writ of possession and advising the spouses-mortgagors that the relief sought in their opposition could be ventilated in a separate action. Meanwhile, on October 10, 1983, the Register of Deeds of Pasay City issued a new TCT No. 73492 over the said house and lot, in the name of petitioner.

As a consequence of the order of the trial Court dated October 12, 1983, the spouses-mortgagors filed an action for "Cancellation and Annulment of the extrajudicial foreclosure of Mortgage, Damages and Preliminary Injunction," before the Regional Trial Court at Makati, docketed as Civil Case No. 5566. Inspite of the filing of this civil case the lower court ordered the issuance of the Writ of Possession on December 7, 1983, prompting the spouses-mortgagors to file with the Intermediate Appellate Court a petition for *certiorari* and prohibition.

On July 12, 1984 the Intermediate Appellate Court granted the petition for *certiorari* annulling and setting aside the Writ of Possession. The Intermediate Appellate Court ruled that since under "Section 34, Rule 39 (of the Rules of Court), the purchaser is entitled to receive rents when the property sold is in the possession of a tenant, a *sensu contrario*, when it is in the possession of the owner himself, the purchaser at the extrajudicial sale is not entitled to collect rents and profits from the owner

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during the redemption period implying that the latter is entitled to remain in possession." It further ruled that "it is only after the period of redemption has expired without the judgment debtor having made use of his right of redemption that the ownership and possession of the land are consolidated in the purchaser," and therefore the trial court gravely abused its discretion "in ordering the petitioners to be ejected from their house before the expiration of the redemption period."

We find the present petition meritorious.

It must be recalled that the certificate of sale was registered on September 21, 1982. On October 10, 1983 after the spouses-mortgagors were unable to redeem the property within the period of redemption, the register of deeds issued a new transfer certificate of title in the name of petitioner. On January 21, 1983, petitioner filed a verified petition for the issuance of a Writ of Possession. However, it was only on October 12, 1983 and December 7, 1983, or after the lapse of the redemption period that the lower court directed the issuance of the wit of possession in favor of petitioner. Thus, contrary to the findings of the Intermediate Appellate Court that ejectment of the spouses-mortgagors were effected before the expiration of the redemption period, the facts would bear out that the Writ of Possession was issued after the lapse of that period.

In fact, under Section 7 of Act 3135 the purchaser is entitled to the possession of the property during the redemption period, provided that a proper motion has been filed, a bond approved, and no third person is involved. So had it been held in *Marcelo Steel Corp. vs. Court of Appeals*, 54 SCRA 89, 99, citing *De Gracia vs. San Jose*, 94 Phil. 623, where this Court ruled:

"As may be seen, the law expressly authorizes the purchaser to petition for a writ of possession during the redemption period by filing an *ex parte* motion under oath for that purpose in the corresponding registration or cadastral proceeding in the case of property with Torrens title, and upon the filing of such motion and the approval of corresponding bond, the law also in express terms directs the court to issue the order for a writ of possession. Under the legal provisions above copied, the order for a writ of possession

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issues as a matter of course upon the filing of the proper motion and the approval of the corresponding bond. No discretion is left to the court. And any question regarding the regularity and validity of the sale (and the consequent cancellation of the writ) is left to be determined in a subsequent proceeding as outlined in section 8. Such question is not to be raised as a justification for opposing the issuance of the writ of possession, since, under the Act, the proceeding for this is *ex parte*."

Considering the present case that the period of redemption had already lapsed with no redemption having been made, there is no justifiable ground why the Writ of Possession would not be issued. In the case of *JFC Service Leasing and Acceptance Corp. vs. Nera*, 19 SCRA 181, 185, this Court held:

"Moreover, if under section 7 of Act 3135 the court has the power, on the ex parte application of the purchaser, to issue a writ of possession during the period of redemption, there is no reason why it should not also have the same power after the expiration of that period, especially where, as in this case, a new title has already been issued in the name of the purchaser."

Likewise, in the recent case of *Philippine National Bank vs. Adil*, 118 SCRA 110, 115, this Court reiterated the aforecited case when it ruled that:

"Also, Section 6 of Act No. 3135, as amended by Act 4118, the law that regulates the methods affecting extrajudicial foreclosure of mortgage provides that in cases in which an extrajudicial sale is made, 'redemption shall be governed by the provisions of sections four hundred and sixty-four to four hundred and sixty-six, inclusive, of the Code of Civil Procedure insofar as these are not inconsistent with the provisions of this Act', (Sections 464-466 of the Code of Civil Procedure were superseded by Sections 25-27 and Section 31 of Rule 39 of the Rules of Court which in turn were replaced by Sections 29 to 31 and Section 35 of Rule 39 of the Revised Rules of Court. Section 35 which is one of the specific provisions applicable to that case at bar provides that 'If no redemption be made within twelve (12) months after the sale, the purchaser, or his assignee, is entitled to a conveyance and possession of property. x x x. The possession of the property shall be given to the purchaser or last redemptioner by the officer unless a third party is actually holding the property adversely to the judgment debtor."

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x x x x x x x x x

"The rule, therefore, is that after the redemption, period has expired, the purchaser of the property has the right to be placed in possession thereof."

WHEREFORE, the decision appealed from is hereby REVERSED, and the writ of possession issued pursuant to the order dated December 7, 1983 by the Regional Trial Court of Rizal, is hereby upheld without pronouncement as to cost.

SO ORDERED.

Teehankee, C.J., Melencio-Herrera, Plana, Gutierrez, Jr., and *De la Fuente,*** *JJ.,* concur.

FIRST DIVISION

[G.R. Nos. 71695-703. May 20, 1986]

ASIAN FOOTWEAR & RUBBER CORPORATION, *petitioner, vs.* **ANTONIO P. SORIANO,** in his capacity as Deputy Sheriff of the Arbitration Branch, National Capital Region, National Labor Relations Commission, **HON. BENIGNO L. VIVAR, JR.,** in his capacity as Executive Labor Arbiter, Arbitration Branch, National Capital Region, National Labor Relations Commission, **and JACINTO RUBBER FREE WORKERS ASSOCIATION,** *respondents.*

** His signature should be disregarded, Justice de la Fuente having retired from the Court on March 6, 1986.