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FIRST DIVISION

[G.R. No. 197797. August 9, 2017]

HEIRS OF JOSE PEÑAFLOR, namely: JOSE PEÑAFLOR, JR. and VIRGINIA P. AGATEP, represented by JESSICA P. AGATEP, *petitioners, vs.* **HEIRS OF ARTEMIO and LYDIA DELA CRUZ, namely: MARILOU, JULIET, ROMEO, RYAN, and ARIEL, all surnamed DELA CRUZ,** *respondents.*

SYLLABUS

1. MERCANTILE LAW; ACT 3135, AS AMENDED (AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL ESTATE MORTGAGES); EXTRAJUDICIAL FORECLOSURE OF MORTGAGE; ISSUANCE OF WRIT OF POSSESSION TO THE PURCHASER IN A FORECLOSURE SALE IS A MINISTERIAL DUTY OF THE TRIAL COURT UPON MERE *EX-PARTE* MOTION; DISCUSSED.— "It is well-settled that the purchaser in an extrajudicial foreclosure of real property becomes the *absolute* owner of the property if no redemption is made within one [(1)] year from the registration of the certificate of sale by those entitled to redeem. As absolute owner, he is entitled to all the rights of ownership over a property recognized in Article 428 of the New Civil Code, not least of which is possession, or *jus possidendi*[.]" "Possession being an essential right of the owner with which he is able to exercise the other attendant rights of ownership, after consolidation of title[,] the purchaser in a foreclosure sale may demand possession as a matter of right. This is why Section 7 of Act No. 3135, as amended by Act No. 4118 imposes upon the RTC a ministerial duty to issue a writ of possession to the new owner upon a mere *ex parte* motion.

2. ID.; ID.; ID.; ID.; ADVERSE POSSESSION AS AN EXCEPTION THERETO CONTEMPLATES A SITUATION IN WHICH A THIRD PARTY HOLDS THE PROPERTY BY ADVERSE TITLE OR RIGHT; THE PROCEDURE IS FOR THE TRIAL COURT TO ORDER A HEARING TO

DETERMINE THE NATURE OF ADVERSE POSSESSION. — Section 33, Rule 39 of the Rules of Court — which is applied to extrajudicial foreclosure of mortgages per Section 6 of Act No. 3135 — provides that upon the expiration of the redemption period, the possession of the property shall be given to the purchaser or last redemptioner, **unless a third party is actually holding the property adversely to the judgment obligor**. "In *China Banking Corporation v. Spouses Lozada*, it was held that for the court's ministerial duty to issue a writ of possession to cease, 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**: x x x Specifically, the Court held that to be considered in adverse possession, **the third party possessor must have done so in his own right and not merely as a successor or transferee of the debtor or mortgagor**: The exception provided under Section 33 of Rule 39 of the Revised Rules of Court contemplates a situation in which a third party holds the property by adverse title or right, such as that of a co-owner, tenant or usufructuary. The co-owner, agricultural tenant, and usufructuary possess the property in their own right, and they are not merely the successor or transferee of the right of possession of another co-owner or the owner of the property. x x x. Thus, in *BPI Family*, the Court ruled that it was an error to issue an *ex parte* writ of possession to the purchaser in an extrajudicial foreclosure, or to refuse to abate one already granted, **where a third party has raised in an opposition to the writ or in a motion to quash the same, his actual possession thereof upon a claim of ownership or a right adverse to that of the debtor or mortgagor. The procedure, according to *Unchuan v. CA*, is for the trial court to order a hearing to determine the nature of the adverse possession, conformably with the time-honored principle of due process.**"

3. **CIVIL LAW; PROPERTY; MODES OF ACQUIRING OWNERSHIP; WAIVER OF CIVIL RIGHTS IS NOT A DERIVATIVE MODE OF OWNERSHIP.—** By virtue of the May 3, 1989 waiver, Nicolasa *supposedly* waived, renounced, transferred, and quitclaimed all her rights, interests, and participation over the subject property to Artemio. **However, a mere waiver of rights is not an effective mode of transferring ownership under our Civil Code.** In *Acap v.*

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CA (Acap), it was ruled that "[u]nder Article 712 of the Civil Code, the modes of acquiring ownership are generally classified into two (2) classes, namely, the **original mode** (*i.e.*, through occupation, acquisitive prescription, law or intellectual creation) and the **derivative mode** (*i.e.*, through succession *mortis causa* or tradition as a result of certain contracts, such as sale, barter, donation, assignment or *mutuum*). By its terms, the May 3, 1989 Waiver cannot be classified as any of these kinds of contracts from which Artemio could derive ownership of the subject property. It cannot be classified as a sale (because there is no price certain in money or its equivalent); as a barter (because of the lack of any other thing given as consideration); a donation (because of the lack of *animus donandi* and even a formal acceptance) an assignment (because of the lack of price); and/or a *mutuum* (because it is not a loan). Neither can it be considered as an assignment either by onerous or gratuitous title so as to conclude that Nicolasa had already lost her right to possess the subject property to Artemio prior to its mortgage. Notably, in *Acap*, the Court debunked the lower court's characterization of a certain Declaration of Heirship and Waiver of Rights to a contract of sale, holding that the private respondent therein cannot conclusively claim ownership of the property subject of that case on the sole basis of a waiver document which neither recites the elements of either a sale or a donation, or any other derivative mode of acquiring ownership.

SERENO, *C.J., dissenting opinion*:

1. MERCANTILE LAW; ACT 3135, AS AMENDED (AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL ESTATE MORTGAGES); EXTRAJUDICIAL FORECLOSURE OF MORTGAGE; ISSUANCE OF WRIT OF POSSESSION IS MINISTERIAL UPON THE COURT AFTER THE FORECLOSURE SALE AND DURING THE REDEMPTION PERIOD.— The well-settled rule is that in the extrajudicial foreclosure of real estate mortgage under Act No. 3135, the issuance of a writ of possession is ministerial upon the court after the foreclosure sale and during the redemption period. In the latter period, the court may issue an order for a writ of possession upon the mere filing of an *ex parte* motion and the

approval of the corresponding bond. A writ of possession also issues as a matter of course without need of a bond or of a separate and independent action after the lapse of the period of redemption and the consolidation of ownership in the purchaser's name.

2. **ID.; ID.; ID.; ID.; AN EXCEPTION THERETO IS WHEN A THIRD PARTY IN POSSESSION OF THE PROPERTY CLAIMS A RIGHT ADVERSE TO THAT OF THE DEBTOR-MORTGAGOR IN A FORECLOSURE SALE.—** There are, x x x, several exceptions to this ministerial duty established by law and jurisprudence. One of the exceptions is that which was first enunciated in *Barican v. Intermediate Appellate Court* in line with Section 33, Rule 39 of the Rules of Court: when a third party in possession of the property claims a right adverse to that of the debtor-mortgagor in a foreclosure case. The threshold issue in this case revolves around this particular exception. x x x [T]here are three requisites that must concur for the exception to apply: 1. The claimant must be a third party. 2. The claimant must be in actual possession of the subject property. 3. The third party in possession must claim a right adverse to that of the debtor or mortgagor in the foreclosure proceedings. The vast body of case law on the exception provides an insight into the specifics of each requisite. Under the *first requisite*, to be considered a third party means that the claimant was a stranger to the foreclosure proceedings. *Villanueva v. Cherdan Lending Investors Corporation* defines a third party in a more specific manner as one who was a stranger to the mortgage, and who did not participate in the foreclosure proceedings. Under the *second requisite*, possession is to be understood in its ordinary meaning. That is, the claimant must hold actual possession of the property in a certain and undisputed manner. The *last requisite* must be understood in light of possession by a third party. To put it simply, the possession must be under a claim adverse to that of the debtor/mortgagor; he third party must be asserting a hold on the property in litigation under a title adverse to that of the debtor/mortgagor. Under this requisite, **a claim or an assertion of an adverse nature is sufficient.**

3. **ID.; ID.; ID.; ID.; ID.; A COURT HEARING IS REQUIRED TO DETERMINE THE NATURE OF POSSESSION; PURPOSE.—** The **concurrence of the three requisites** x x x

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would result in the application of the exception. Consequently, the ministerial duty of the court to issue an *ex parte* writ of possession ceases. Instead, it is mandated to conduct a hearing to determine the nature of the possession; *i.e.,* whether or not the third party is in possession of the subject property under a claim adverse to that of the judgment debtor. It is in this manner that the issuance of a writ of possession ceases to be *ex parte* and non-adversarial. x x x **If the possession is adverse within the definition of the law, the court shall defer or quash the issuance of a writ of possession; otherwise, it shall proceed to issue the writ.**

4. ID.; ID.; ID.; ID.; ID.; ADVERSE POSSESSION; THIRD-PARTY CLAIMANT NEED NOT PROVE OWNERSHIP BUT MUST SHOW WITH A PREPONDERANCE OF EVIDENCE THAT HE OR SHE IS IN POSSESSION OF THE PROPERTY AND IS ASSERTING A RIGHT ADVERSE TO THAT OF THE DEBTOR/MORTGAGOR.— In determining whether or not possession is indeed adverse, the court must look into the nature of the possession by the third-party claimant and determine if the latter's claim is indeed adverse, as defined above, and is *bona fide* and in good faith. To provide a better understanding of when possession is adverse, jurisprudence on who is *not* an adverse claimant is informative. In *Planas v. Madrigal & Co.*, the Court held that an adverse claimant must not be a mere transferee or possessor *pendente lite* of the property in question. *Roxas v. Buan* held that a successor-in-interest of the judgment obligor cannot be considered an adverse claimant. In *Rivero de Ortega*, the Court stated that an adverse possessor must be one who did not acquire possession from a person who was bound by the decree; rather, the adverse claimant must be a mere stranger who entered into possession before the foreclosure suit began. x x x In other words, in order not to be ousted by the *ex parte* issuance of a writ of possession, the third party must have possession that proceeds from a right independent of and even superior to that of the judgment debtor/mortgagor. Not only must the property be possessed by a third party; it must also be adversely held by the third party *adversely to the judgment obligor.* In light of these rulings, it is apparent that the third-party claimant need not prove ownership in the proceedings. All that needs to be shown with a preponderance of evidence is that the third-

party claimant is in possession of the property and is asserting a right adverse to that of the debtor/mortgagor with respect to the possession as discussed above. **Once such evidence is shown, the court must defer the issuance of a writ of possession and let the parties file the proper judicial action. The matter of whether or not the third-party claimant is indeed the lawful owner or better possessor of the property is a matter that must be threshed out in a separate proceeding.**

APPEARANCES OF COUNSEL

Lourdes I. De Dios for petitioners.
Karaan and Karaan Law Office for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated February 18, 2011 and the Resolution[3] dated July 8, 2011 of the Court of Appeals (CA) in CA-G.R. SP No. 110392, which annulled and set aside the Writ of Possession[4] dated June 27, 2008 and Notice to Vacate[5] dated June 18, 2009 issued by the Regional Trial Court of Olongapo City, Branch 72 in Other Case No. 38-0-93, thereby reinstating herein respondents heirs of Artemio and Lydia dela Cruz, namely: Marilou, Juliet, Romeo, Ryan, and Ariel, all surnamed dela Cruz (respondents), to the possession of the subject property.

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[1] *Rollo*, pp. 10-48.

[2] *Id*. at 55-68. Penned by Associate Justice Ricardo R. Rosario with Associate Justices Hakim S. Abdulwahid and Samuel H. Gaerlan concurring.

[3] *Id*. at 70-71.

[4] *Id*. at 122-124. Issued by Judge Richard A. Paradeza.

[5] *Id*. at 128. Signed by Sheriff IV Leandro R. Madarang.

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The Facts

Respondents are the successors-in-interest of the late Artemio dela Cruz (Artemio), who is the son of Nicolasa dela Cruz, the original owner of a parcel of land situated at No. 11, Ifugao St., Brgy. Barretto, Olongapo City, including a two-storey building erected thereon (subject property).[6]

On April 15, 1991, Nicolasa authorized her daughter, Carmelita C. Guanga (Carmelita), Artemio's sister, to mortgage[7] the subject property to Jose R. Peñaflor (Peñaflor), the predecessor-in-interest of herein petitioners, Jose Peñaflor, Jr. and Virginia P. Agatep (represented by Jessica P. Agatep; collectively, petitioners) in order to secure a loan in the amount of ₱112,000.00.[8] As Nicolasa failed to settle her loan obligation when it fell due, Peñaflor filed an application for extra-judicial foreclosure of mortgage[9] before the Regional Trial Court of Olongapo City, Branch 72 (RTC), docketed as Case No. 07-0-91.[10] After the requirements of posting, notices, and publication were complied with, the subject property was sold at a public auction, where Peñaflor emerged as the highest bidder.[11] A Certificate of Sale[12] was thus issued in his favor. The period of redemption expired without the subject property being redeemed; hence, a Final Bill of Sale[13] was issued and registered in Peñaflor's name. Thereafter, the latter executed an Affidavit of Consolidation of Ownership.[14] This notwithstanding, Nicolasa persisted in her

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[6] *Id*. at 56.

[7] Real Estate Mortgage; *id*. at 77-78.

[8] See *id*. at 56.

[9] Not attached to the *rollo*.

[10] See *rollo*, p. 15.

[11] *Id*. at 87.

[12] Dated November 21, 1991. *Id*. at 83-84.

[13] Dated December 14, 1992. *Id*. at 85-86.

[14] Not attached to the *rollo*.

occupancy of the subject property and refused to deliver possession to Peñaflor.[15]

The RTC Proceedings

Seeking to enforce his right to possess the subject property, Peñaflor filed a petition for the *ex parte* issuance of a writ of possession[16] before the RTC, docketed as Other Case No. 38-0-93.[17] On November 19, 1993, the RTC granted[18] the petition for the issuance of a writ of possession. Nicolasa and Carmelita did not appeal the decision;[19] thus, the same lapsed into finality.[20]

However, the writ of possession was not enforced as Artemio filed a complaint for annulment of judgment[21] before the same trial court, docketed as Civil Case No. 15-0-94 (annulment of judgment case), claiming to be the lawful owner and possessor of the subject property even prior to the mortgage.[22] Artemio's complaint was eventually dismissed without prejudice on the ground of lack of jurisdiction.[23]

In April 1998 (and thus after the mortgage of the subject property in April 1991), Artemio filed a separate complaint for ejectment against Carmelita before the Municipal Trial Court in Cities of Olongapo City, Branch 5 (MTCC), docketed as Civil Case No. 4065 (ejectment case).[24] In support of his

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[15] See *rollo*, p. 88.

[16] Not attached to the *rollo*.

[17] "Civil Case No. 38-0-93" in the Decision. See *rollo*, p. 87.

[18] See Decision dated November 19, 1993 penned by Judge Jaime P. Dojillo; *id*. at 87-88.

[19] *Id*. at 57.

[20] See Entry of Judgment dated December 17, 1993 issued by Clerk of Court VI Andrew M. Penullar; *id*. at 89.

[21] Not attached to the *rollo*.

[22] See *rollo*, pp. 90-91.

[23] See Decision dated March 4, 1998, penned by Judge Ellodoro G. Ubiadas; *id*. at 90-95.

[24] See *id*. at 41 and 58.

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complaint, he submitted: (1) Miscellaneous Sales Application No. (1-4) 3407 filed with the Bureau of Lands, Olongapo City; (2) Deeds of Real Estate Mortgage signed by Artemio, mortgaging the said property to one "Rosita Bonilla"; and (3) Certifications attesting that he had declared the subject property in his name for taxation purposes.[25] Also, he submitted a notarized deed dated May 3, 1989 denominated as "Waiver and Transfer of Possessory Rights"[26] (May 3, 1989 Waiver) executed by Nicolasa, waiving and transferring all her rights and interests over the subject property in favor of Artemio.[27] The MTCC granted Artemio's ejectment complaint against Carmelita, which was eventually affirmed by the Court in G.R. No. 150187.[28]

In the meantime, the proceedings in Other Case No. 38-0-93 continued. On June 27, 2008, the RTC issued an Amended Order[29] granting Peñaflor's application for a writ of possession anew.[30] On even date, the RTC issued the Writ of Possession.[31] Thereafter, the RTC issued a Notice to Vacate[32] dated July 11, 2008, ordering Artemio to vacate the subject property.[33] However, on July 23, 2008, Artemio and his wife, Lydia dela Cruz (Sps. dela Cruz), filed a motion to quash the writ of possession and notice to vacate,[34] claiming that the said writ could not be enforced against them as they are strangers to Other Case No. 38-0-93 who are holding the subject property adversely to the judgment obligor,[35]

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[25] *Id*. at 58.

[26] *Id*. at 170.

[27] *Id*. at 59.

[28] See *id*. at 59-60. See also *Guanga v. Dela Cruz*, 519 Phil. 764 (2006).

[29] *Id*. at 120-121. Penned by Judge Richard A. Paradeza.

[30] *Id*. at 61.

[31] *Id*. at 122-124.

[32] Not attached to the *rollo*.

[33] *Rollo*, p. 25.

[34] Not attached to the *rollo*.

[35] See *rollo*, pp. 25 and 125.

i.e., Nicolasa. Artemio's siblings, Sotero, Mario, and Clarita, all surnamed dela Cruz, and Charlie Guanga (Carmelita's son)[36] likewise filed separate motions to quash the aforesaid writ and notice, claiming their rights over the subject property.[37] Their motions were, however, denied by the RTC in an Order[38] dated December 5, 2008. Consequently, Sotero, Mario, and Charlie filed a joint motion for reconsideration[39] of the said Order, which was likewise denied by the RTC.[40] Subsequently, the RTC issued another Notice to Vacate[41] dated June 18, 2009, ordering the children of Nicolasa to vacate the subject property. Said motions having been denied, herein respondents, in substitution of their parents, filed another motion[42] praying that the implementation of the writ of possession be held in abeyance as they are third persons in actual possession of the subject property who are asserting rights adverse to the judgment obligor.[43] The RTC likewise denied respondents' motion in an Order[44] dated August 14, 2009; hence, prompting them to elevate this case to the CA via a petition for *certiorari*,[45] docketed as CA-G.R. SP No. 110392.

The CA Ruling

In a Decision[46] dated February 18, 2011, the CA annulled and set aside the writ of possession and notice to vacate issued

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[36] See *id*. at 25.

[37] *Id*. at 125.

[38] *Id*.

[39] Not attached to the *rollo*.

[40] See Order dated May 27, 2009; *id*. at 126-127.

[41] *Id*. at 128.

[42] Not attached to the *rollo*.

[43] *Rollo*, p. 62.

[44] *Id*. at 129.

[45] Not attached to the *rollo.*

[46] *Rollo*, pp. 55-68.

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by the RTC.[47] It held that respondents are holding the subject property adverse to Nicolasa, the judgment obligor.[48] As basis, it pointed out that the evidence submitted by Artemio in the ejectment case, all indicate that he was claiming ownership of the subject property, which was in his possession at that time.[49] Further, the CA gave credence to the May 3, 1989 Waiver, which showed that Nicolasa had already renounced all her rights over the subject property in 1989, or two (2) years before she authorized Carmelita to mortgage the subject property.[50] Hence, finding that Artemio's claim of ownership as against Nicolasa is "at the very least, bona fide and made in good faith," the CA ruled that the RTC should have desisted from enforcing the writ of possession against Artemio's heirs, herein respondents.[51] The remedy, according to the CA, "is not the implementation of the writ of possession but for the purchaser or the redemptioner to institute ejectment proceedings or a reinvindicatory action."[52]

Dissatisfied, petitioners filed a motion for reconsideration,[53] which was, however, denied in a Resolution[54] dated July 8, 2011; hence, this petition.

The Issue Before the Court

The main issue for the Court's resolution is whether or not the CA erroneously set aside the Writ of Possession and Notice to Vacate issued by the RTC in favor of herein petitioners.

The Court's Ruling

The petition is meritorious.

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[47] *Id*. at 64.

[48] *Id*.

[49] *Id*.

[50] See *id*. at 64-65.

[51] See *id*. at 65-67.

[52] *Id*. at 67.

[53] Not attached to the *rollo*.

[54] *Rollo*, pp. 70-71.

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"It is well-settled that the purchaser in an extrajudicial foreclosure of real property becomes the *absolute* owner of the property if no redemption is made within one [(1)] year from the registration of the certificate of sale by those entitled to redeem. As absolute owner, he is entitled to all the rights of ownership over a property recognized in Article 428 of the New Civil Code, not least of which is possession, or *jus possidendi*[.]"[55]

"Possession being an essential right of the owner with which he is able to exercise the other attendant rights of ownership, after consolidation of title[,] the purchaser in a foreclosure sale may demand possession as a matter of right. This is why Section 7 of Act No. 3135,[56] as amended by Act No. 4118,[57] imposes upon the RTC a ministerial duty to issue a writ of possession to the new owner upon a mere *ex parte* motion. Section 7 reads:

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 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 194 of the Administrative Code, or of any other real property

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[55] See *Spouses Gallent, Sr. v. Velasquez*, G.R. Nos. 203949 and 205071, April 6, 2016, 788 SCRA 518, 529-530.

[56] Entitled "AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL-ESTATE MORTGAGES" (March 6, 1924).

[57] 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'" (December 7, 1933).

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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 court shall, upon the filing of such petition, collect the fees specified in paragraph 11 of Section 114 of Act No. 496, as amended by Act No. 2866, 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.

In *Spouses Arquiza v. CA*,[58] it was reiterated that simply on the basis of the purchaser's ownership of the foreclosed property, there is no need for an ordinary action to gain possession thereof:

Indeed, it is well-settled that an ordinary action to acquire possession in favor of the purchaser at an extrajudicial foreclosure of real property is not necessary. There is no law in this jurisdiction whereby the purchaser at a sheriff's sale of real property is obliged to bring a separate and independent suit for possession after the one-year period for redemption has expired and after he has obtained the sheriff's final certificate of sale. The basis of this right to possession is the purchaser's ownership of the property. The mere filing of an *ex parte* motion for the issuance of the writ of possession would suffice, and no bond is required."[59]

In *Asia United Bank v. Goodland Company, Inc.*,[60] the Court observed that the *ex parte* application for [a] writ of possession is a non-litigious summary proceeding without need to post a bond, except when possession is being sought even during the redemption period:

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

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[58] 498 Phil. 793 (2005).

[59] *Id*. at 804. See also *Spouses Gallent*, *Sr. v. Velasquez*, *supra* note 54, at 531.

[60] 650 Phil. 174 (2010).

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.[61] (Emphasis and underscoring supplied)

Further, in *BPI Family Savings Bank, Inc. v. Golden Power Diesel Sales Center, Inc.*[62] (*BPI Family*), the Court remarked that not even a pending action to annul the mortgage or the foreclosure sale will by itself stay the issuance of the writ of possession:

> Furthermore, it is settled that a pending action for annulment of mortgage or foreclosure sale does not stay the issuance of the writ of possession. The trial court, where the application for a writ of possession is filed, does not need to look into the validity of the mortgage or the manner of its foreclosure. The purchaser is entitled to a writ of possession without prejudice to the outcome of the pending annulment case.[63]

However, Section 33, Rule 39 of the Rules of Court – which is applied to extrajudicial foreclosure of mortgages per Section 6 of Act No. 3135 – provides that upon the expiration of the redemption period, the possession of the property shall be given to the purchaser or last redemptioner, **unless a third party is actually holding the property adversely to the judgment obligor**.

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[61] *Id*. at 185-186. See also *Spouses Gallent*, *Sr. v. Velasquez*, *supra* note 54, at 532.

[62] 654 Phil. 382 (2011).

[63] *Id*. at 394. See also *Spouses Gallent, Sr. v. Velasquez*, *supra* note 54, at 532-533.

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"In *China Banking Corporation v. Spouses Lozada*,[64] it was held that for the court's ministerial duty to issue a writ of possession to cease, 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**:

> Where a parcel levied upon on execution is occupied by a party other than a judgment debtor, the procedure is for the court to order a hearing to determine the nature of said adverse possession. Similarly, in an extrajudicial foreclosure of real property, 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 RTC of a writ of possession in favor of the purchaser of the said real property ceases to be ministerial and may no longer be done *ex parte*. For the exception to apply, however, the property need not only be possessed by a third party, but also held by the third party adversely to the debtor/mortgagor.[65]

Specifically, the Court held that to be considered in adverse possession, **the third party possessor must have done so in his own right and not merely as a successor or transferee of the debtor or mortgagor**:

> The exception provided under Section 33 of Rule 39 of the Revised Rules of Court contemplates a situation in which a third party holds the property by adverse title or right, such as that of a co-owner, tenant or usufructuary. The co-owner, agricultural tenant, and usufructuary possess the property in their own right, and they are not merely the successor or transferee of the right of possession of another co-owner or the owner of the property. x x x.[66]

Thus, in *BPI Family*, the Court ruled that it was an error to issue an *ex parte* writ of possession to the purchaser in an extrajudicial foreclosure, or to refuse to abate one already granted, **where a third party has raised in an opposition to the writ or in a motion to quash the same, his actual possession thereof**

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[64] 579 Phil. 454 (2008).

[65] *Id*. at 474-475.

[66] *Id*. at 478-480.

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upon a claim of ownership or a right adverse to that of the debtor or mortgagor. **The procedure, according to *Unchuan v. CA*,**[67] **is for the trial court to order a hearing to determine the nature of the adverse possession, conformably with the time-honored principle of due process**."[68]

In this case, respondents, in their Comment and/or Opposition[69] submitted before this Court, claim that "**Artemio Dela Cruz validated his ownership of the subject property**, including the [two-storey] house erected thereon and other improvements, **through a deed of waiver and transfer of possessory rights executed by his mother, Nicolasa Dela Cruz in May 3, 1989** which is attached and made [an] integral part hereof."[70]

However, it is apparent from the face of this document that the same was not an effective mode of transferring Nicolasa's ownership to Artemio, which could have thus given the latter an independent right over the subject property prior to its mortgage to Peñaflor. The May 3, 1989 Waiver reads:

> That I, NICOLASA DELA CRUZ, of legal age x x x and residing at No. 11, Ifugao St., Barretto, Olongapo City, Philippines, do hereby by these presents, freely and irrevocably WAIVE, RENOUNCE, TRANSFER and QUITCLAIM all my rights, interests and participation over a parcel of residential lot including all the existing improvements thereon, more particularly described as follows:
>
> > A parcel of residential lot situated at No. 11, Ifugao St., Barretto, Olongapo City, containing an area of 450 square meters more or less, x x x
>
> in favor of my son ARTEMIO DELA CRUZ, likewise of legal age x x x and residing at No. 11, Ifugao St., Barretto, Olongapo City, Philippines, the above-described property free from all liens and encumbrances.

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[67] 244 Phil. 733, 738 (1988).

[68] *Spouses Gallent, Sr. v. Velasquez*, *supra* note 54, at 535-536; emphases and underscoring supplied.

[69] Dated December 5, 2011. *Rollo*, pp. 158-169.

[70] *Id*. at 160; emphases supplied.

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That I hereby warrant peaceful possession of the above-described property herein waived, binding myself to defend him, his heirs, successors, assigns from any lawful claims of any person whomsoever.

x x x x x x x x x[71]

By virtue thereof, Nicolasa *supposedly* waived, renounced, transferred, and quitclaimed all her rights, interests, and participation over the subject property to Artemio. **However, a mere waiver of rights is not an effective mode of transferring ownership under our Civil Code.**

In *Acap v. CA* (*Acap*),[72] it was ruled that "[u]nder Article 712 of the Civil Code, the modes of acquiring ownership are generally classified into two (2) classes, namely, **the original mode** (*i.e.*, through occupation, acquisitive prescription, law or intellectual creation) and **the derivative mode** (*i.e.*, through succession *mortis causa* or tradition as a result of certain contracts, such as sale, barter, donation, assignment or *mutuum*).[73]

By its terms, the May 3, 1989 Waiver cannot be classified as any of these kinds of contracts from which Artemio could derive ownership of the subject property. It cannot be classified as a sale (because there is no price certain in money or its equivalent);[74]

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[71] *Id*. at 170.

[72] 321 Phil. 381 (1995).

[73] *Id*. at 390; emphases supplied.

[74] "Art. 1458 [of the Civil Code reads:] By the contract of sale, one of the contracting parties obligates himself to transfer the ownership of and to deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent.

x x x x x x x x x

Sale, by its very nature, is a consensual contract because it is perfected by mere consent. The essential elements of a contract of sale are the following:

a) Consent or meeting of the minds, that is, consent to transfer ownership in exchange for the price;
b) Determinate subject matter; and
c) Price certain in money or its equivalent." (*Reyes v. Tuparan*, 665 Phil. 425, 440 [2011].)

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as a barter (because of the lack of any other thing given as consideration);[75] a donation (because of the lack of *animus donandi* and even a formal acceptance);[76] an assignment (because of the lack of price);[77] and/or a *mutuum* (because it is not a loan).[78] Neither can it be considered as an assignment either by onerous or gratuitous title[79] so as to conclude that Nicolasa had already lost her right to possess the subject property to Artemio prior to its mortgage.

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[75] Article 1638 of the Civil Code reads:

Art. 1638. By the contract of barter or exchange one of the parties binds himself to give one thing in consideration of the other's promise to give another thing.

[76] "The essential elements of donation are as follows: (a) the essential reduction of the patrimony of the donor; (b) the increase in the patrimony of the donee; and (c) the intent to do an act of liberality or *animus donandi*. When applied to a donation of an immovable property, the law further requires that the donation be made in a public document and that the acceptance thereof be made in the same deed or in a separate public instrument; in cases where the acceptance is made in a separate instrument, it is mandated that the donor be notified thereof in an authentic form, to be noted in both instruments." (*Heirs of Florencio v. Heirs of de Leon*, 469 Phil. 459, 474 [2004].)

[77] Article 1624 of the Civil Code reads:

Art. 1624. An assignment of credits and other incorporeal rights shall be perfected in accordance with the provisions of Article 1475.

Article 1475 of the Civil Code reads:

Art. 1475. The contract of sale is perfected at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price.

x x x x x x x x x

[78] Article 1933 of the Civil Code reads:

Art. 1933. By the contract of loan, one of the parties delivers to another, either something not consumable so that the latter may use the same for a certain time and return it, in which case the contract is called a *commodatum*; or money or other consumable thing, upon the condition that the same amount of the same kind and quality shall be paid, in which case the contract is simply called a loan or *mutuum*.

x x x x x x x x x

[79] Article 555 of the Civil Code reads:

Art. 555. A possessor may lose his possession:
(1) By the abandonment of the thing;

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Notably, in *Acap*, the Court debunked the lower court's characterization of a certain Declaration of Heirship and Waiver of Rights to a contract of sale, holding that the private respondent therein cannot conclusively claim ownership of the property subject of that case on the sole basis of a waiver document which neither recites the elements of either a sale or a donation, or any other derivative mode of acquiring ownership:

> In the case at bench, the trial court was obviously confused as to the nature and effect of the Declaration of Heirship and Waiver of Rights, equating the same with a contract (deed) of sale. They are not the same.
>
> In a Contract of Sale, one of the contracting parties obligates himself to transfer the ownership of and to deliver a determinate thing, and the other party to pay a price certain in money or its equivalent.
>
> Upon the other hand, a declaration of heirship and waiver of rights operates as a public instrument when filed with the Registry of Deeds whereby the intestate heirs adjudicate and divide the estate left by the decedent among themselves as they see fit. It is in effect an extrajudicial settlement between the heirs under Rule 74 of the Rules of Court.
>
> Hence, there is a marked difference between a *sale* of hereditary rights and a *waiver* of hereditary rights. **The first presumes the existence of a contract or deed of sale between the parties**. The second is, technically speaking, a mode of extinction of ownership where there is an abdication or intentional relinquishment of a known right with knowledge of its existence and intention to relinquish it, *in favor of other persons who are co-heirs in the succession*. Private respondent, being then a stranger to the succession of Cosme Pido, **cannot conclusively claim ownership over the subject lot on the sole basis of the waiver document which neither recites the elements**

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(2) By an assignment made to another either by onerous or gratuitous title;
(3) By the destruction or total loss of the thing, or because it goes out of commerce;
(4) By the possession of another, subject to the provisions of Article 537, if the new possession has lasted longer than one year. But the real right of possession is not lost till after the lapse of ten years.

of either a sale, or a donation, or any other derivative mode of acquiring ownership.

Quite surprisingly, both the trial court and public respondent Court of Appeals concluded that a "sale" transpired between Cosme Pido's heirs and private respondent and that petitioner acquired actual knowledge of said sale when he was summoned by the Ministry of Agrarian Reform to discuss private respondent's claim over the lot in question. This conclusion has no basis both in fact and in law.[80] (Emphases and underscoring supplied)

Indeed, while the nature of the document in *Acap* is different from the May 3, 1989 Waiver, the principle remains the same. Artemio cannot claim any independent right over the subject property by virtue of a document that does not even purport to be an effective mode of transfer.

According to the CA, the totality of evidence shows that Artemio is an adverse third party-possessor of the subject property.[81] Aside from the May 3, 1989 Waiver, the evidence consist of the following:

(1) Miscellaneous Sales Application No. (1-4) 3407 over the subject property filed with the Bureau of Lands, Olongapo City on October 2, 1968;

(2) Deeds of Real Estate Mortgage dated May 30, 1973 and October 30, 1968, signed by Artemio and mortgaging the subject property and the parcel of land on which it stands to one "Rosita Bonilla"; and

(3) Certifications dated January 7, 1969 and May 22, 1989 of the Office of the City Assessor, Olongapo City, attesting that respondent had declared the subject property in his name for taxation purposes.[82]

After much reflection, the Court finds that these pieces of evidence are actually **inadmissible** to prove Artemio's independent

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[80] *Acap*, *supra* note 71, at 390-392.

[81] See *rollo*, pp. 64-65.

[82] See *id*. at 58.

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right of ownership in this case against the mortgagee, Peñaflor and his heirs, as **they were never submitted as evidence before the RTC in Other Case No. 38-0-93**. These pieces of evidence were those submitted and considered in **Civil Case No. 4065**, which is the **ejectment case against his sister, Carmelita**. Therefore, Peñaflor was not given an opportunity to contest the genuineness and authenticity of these documents in these proceedings and also, with his own evidence, to rebut the same. Hence, to consider these documents against him in this case would surely violate his right to due process.

Moreover, it should be highlighted that these pieces of evidence were offered to prove one thing, and one thing alone: that Artemio had the better right to possess the subject property only as against his sister, Carmelita. The Court, in G.R. No. 150187, entitled "*Carmelita Guanga v. Artemio dela Cruz*," which stemmed from Civil Case No. 4065, recognized that "the only question to resolve in ejectment suits such as in this case is who between the parties has the better right of possession *de facto* over the disputed property."[83] While the Court did inquire into the question of the property's ownership, it explicitly clarified that it did so "only for the limited purpose of determining prior possession."[84] Thus, with this established limitation on ejectment cases in mind, it cannot be denied that the aforementioned evidence cannot bind even Carmelita — the opposing party herself in Civil Case No. 4065 — on issues regarding ownership and much more, Peñaflor and his heirs, in a totally different case, *i.e.*, Other Case No. 38-0-93, from which the present petition emanated. At the very least, the fundamental right of due process demands that Peñaflor (and now, his heirs) be given an opportunity to challenge such evidence before they may be considered in any respect against him. In fact, the RTC in Other Case No. 38-0-93 implicitly touched on this conundrum in its Order dated August 14, 2009 when it held that:

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[83] See *Guanga v. Dela Cruz*, *supra* note 28.

[84] *Id*. at 773.

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Oppositors Heirs of Artemio and Lydia dela Curz cited case pertains to an unlawful [detainer] case filed against them by Carmelita Guanga which issue of possession had been ruled in favor of the said heirs and herein petitioners is not a party to the said case. Hence, said Decision of the Supreme Court in that G.R. No. 150187 does not affect yet herein petitioners not being in possession of the property then.[85]

In any event, none of those pieces of evidence submitted in Civil Case No. 4065 would even satisfactorily show that Artemio had an independent title to the subject property enough to dispossess the mortgagee, Peñaflor, who had already consolidated his own title over the same. First, Miscellaneous Sales Application No. (1-4) 3407 is only a sales patent application, which was not clearly shown to have been granted so as to vest in him title over the property. Second, the Deeds of Real Estate Mortgage are not documents which show the original source of the mortgagor's own title; on the contrary, these documents already assume that the mortgagor is the owner of the property and thus, could mortgage the same. And finally, the Certifications attesting that Artemio had declared the subject property in his name for taxation purposes (*i.e.*, tax declarations) only constitute "proof that the holder has a claim of title over the property,"[86] and are therefore, not valid documents which would show his source of title. In fact, Nicolasa too had tax declarations in her name, showing that she had a claim of title over the same property.[87] To note, these documents were her own proof of ownership through which she was able to mortgage the subject property (appearing to be an unregistered land) in favor of Peñaflor.

As above-discussed, where a third party has raised in an opposition to the writ of possession or in **a motion to quash the same** his actual possession thereof **upon a claim of ownership or a right adverse to that of the debtor or mortgagor** — as

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[85] *Rollo*, p. 129.

[86] *The Director of Lands v. CA*, 367 Phil. 597, 604 (1999).

[87] *Rollo*, pp. 34, 81, and 82.

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in this case — **the procedure is for the trial court to order a hearing to determine the nature of the adverse possession, conformably with the time-honored principle of due process**. Notably, when this opposition is made, the proceeding for the issuance of a writ of possession loses its nature of being an *ex parte*, and instead, turns adversarial, so as to give:

On the one hand, the third party claimant the opportunity to present evidence of his title showing his independent right over the subject property adverse to the judgment obligor/mortgagor; and

On the other hand, the mortgagee the opportunity to rebut said evidence in order to sustain the issuance of the writ and gain possession of the subject property pursuant to his consolidated title.

Jurisprudence describes that "[a]n ***ex parte* proceeding** merely means that it is taken or granted at the instance and for the benefit of one party, and **without notice to or contestation by any party adversely affected**."[88] Clearly, this is not the case when an opposition is made by a third party claimant against the issuance of a writ of possession, from which the court is compelled to now order a hearing to determine the nature of the former's adverse possession.

In this case, the CA improperly considered the evidence submitted in a totally different proceeding (*i.e.*, the ejectment case) taken against an entirely different party (Carmelita) in reversing the RTC's issuance of a writ of possession in favor of Peñaflor. In fact, even if we were to feign ignorance of this clear due process violation, such evidence were, nonetheless, **ostensibly insufficient** to prove that Artemio has an independent right over the subject property adverse to Nicolasa, the judgment obligor/mortgagor. Thus, whether the May 3, 1989 Waiver is the true source of title of Artemio or merely one which fortifies his claim of independent title, the "totality of evidence" is still not enough to prove the same.

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[88] *Spouses Arquiza v. CA*, 498 Phil. 793, 806 (2005); emphases supplied.

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In addition, records are replete with circumstances which diminish the veracity of Artemio's claim against Peñaflor:

(1) In the annulment of judgment case, Artemio claimed that he applied for a sales patent in 1960 which was allegedly approved in 1968 by the Bureau of Lands, per the Miscellaneous Sales Application No. (1-4) 3407 dated October 2, 1968;[89] he likewise claimed in that same case that his mother Nicolasa does not own the property.[90]

(2) Yet, Artemio (and herein respondents) asserted that Nicolasa transferred her rights over the property in 1989 by virtue of the May 3, 1989 Waiver.[91]

(3) Sotero, Mario, and Clarita (siblings of Artemio), and Charlie Guanga (Carmelita's son) filed two (2) separate motions to quash the writ of possession, wherein they claimed that they, with Artemio and Nicolasa, co-owned the subject property. They alleged that said property was part of the conjugal partnership of Sps. dela Cruz. When Ireneo died in 1985, they became pro-indiviso heirs of Ireneo's share to the property.[92]

(4) Mario, however, testified for Artemio in the annulment of judgment case, stating that Nicolasa does not own the subject property.[93]

Taken together, these events would show that: (*a*) Artemio's claim over the subject property is riddled with material inconsistencies; and (*b*) Nicolasa's children (among others, Artemio) appear to have been taking several steps to prevent Peñaflor from taking possession of the subject property and defeating his consolidated ownership rights thereto, thus further casting doubt on Artemio's claim of ownership. In fact, it deserves

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[89] See *rollo*, pp. 92-93.

[90] *Id*. at 90.

[91] See *id*. at 64-65 and 160.

[92] See *id*. at 125-126.

[93] *Id*. at 94.

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mentioning that Artemio filed the ejectment suit in Civil Case No. 4065 only in April 1998, or seven (7) long years after the property had already been mortgaged to Peñaflor in April 1991; thus, it is equally doubtful that he even had possession of the subject property at the time it was mortgaged to Peñaflor. In addition, the RTC had already granted the petition for the issuance of writ of possession in favor of Peñaflor on November 19, 1993, or almost five (5) years prior to the filing of the ejectment suit in April 1998, which decision therein respondents Nicolasa and Carmelita did not appeal.[94]

Hence, for all these reasons, Artemio cannot be considered as a "third party who is actually holding the property adversely to the judgment obligor," *i.e.*, Nicolasa, so as to defeat Peñaflor's right to possess the subject property, which is but an incident to the consolidation of his ownership over the same.

As a final word, it should be clarified that the purpose of a petition for the issuance of a writ of possession under Act No. 3135, as amended by Act No. 4118, is to expeditiously accord the mortgagee **who has already shown a *prima facie* right of ownership over the subject property (based on his consolidated title over the same)** his incidental right to possess the foreclosed property. To reiterate, "[p]ossession being an essential right of the owner with which he is able to exercise the other attendant rights of ownership, after consolidation of title[,] the purchaser in a foreclosure sale may demand possession as a matter of right."[95] **Thus, it is only upon a credible showing by a third party claimant of his independent right over the foreclosed property that the law's *prima facie* deference to the mortgagee's consolidated title should not prevail. Verily, a mere claim of ownership would not suffice**. As jurisprudence prescribes, the demonstration by the third party-claimant should be made within the context of an adversarial hearing, where the basic principles of Evidence and Civil Procedure ought to be followed, such as: (1) it is the claimant

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[94] See *id*. at 57.

[95] See *Spouses Gallent v. Velasquez*, *supra* note 54, at 530.

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who has the burden of proving his claim; (2) the claim must be established through a preponderance of evidence; and (3) evidence not presented or formally offered cannot be admitted against the opposing party. In this case, none of these principles were followed for the CA considered evidence that were not only submitted in a totally different case against an entirely different party, but are also innately inadequate to — at least — *prima facie* show the source of the third party-claimant's independent title, all to the detriment of the mortgagee who had already consolidated his title to the contested property. The reversal of its ruling is therefore in order.

WHEREFORE, the petition is **GRANTED**. The Decision dated February 18, 2011 and the Resolution dated July 8, 2011 of the Court of Appeals in CA-G.R. SP No. 110392 are hereby **REVERSED** and **SET ASIDE**. Accordingly, the Writ of Possession dated June 27, 2008 and Notice to Vacate dated June 18, 2009 issued by the Regional Trial Court of Olongapo City, Branch 72 through its Decision dated November 19, 1993 in Other Case No. 38-0-93 in favor of petitioners heirs of Jose Peñaflor, namely: Jose Peñaflor, Jr. and Virginia P. Agatep, represented by Jessica P. Agatep, are **REINSTATED**.

SO ORDERED.

Leonardo-de Castro, del Castillo, and *Caguioa, JJ.,* concur.

Sereno, C.J., see dissenting opinion.

DISSENTING OPINION

SERENO, *C.J.*:

The threshold issue in this case is whether or not Artemio dela Cruz (Artemio) is a third party in possession of the subject property who claims a right adverse to that of the debtor/mortgagor in the foreclosure proceedings, therefore warranting the quashal of the Writ of Possession.

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The Court of Appeals (CA) annulled the assailed Writ of Possession[1] and Notice to Vacate,[2] which the Regional Trial Court (RTC), Branch 72, Olongapo City, had issued to petitioners' predecessor-in-interest, Jose R. Peñaflor (Peñaflor). The CA found that respondents' predecessor-in-interest, Artemio, was a third party who was in adverse possession of the subject property as against Nicolasa dela Cruz (Nicolasa), the judgment obligor in the *ex parte* possession case. Thus, the RTC had no authority to issue the Writ of Possession and Notice to Vacate.

This finding was based on this Court's Decision in an ejectment case submitted by Artemio (second SC judgment). This Court affirmed therein his lawful possession over the subject property.[3] The CA found that the pieces of evidence that were given probative value by this Court in that case all indicated that Artemio was claiming ownership of the subject property, which was also in his possession.

The CA also took note of a notarized deed dated 3 May 1989 denominated as "Waiver and Transfer of Possessory Rights."[4] The deed was executed by Nicolasa, who thereby waived and transferred all her rights and interests over the subject property in favor of Artemio. To the appellate court, this notarized waiver fortified his adverse claim which, at the very least, was *bona fide* and in good faith.[5]

The CA then held that because Artemio was a third person in possession of the property, the RTC should have desisted from issuing and enforcing a Writ of Possession. It further held that pursuant to law and jurisprudence, a trial court's otherwise ministerial duty to issue a writ of possession in an extrajudicial foreclosure sale ceases when the subject property is in the

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[1] *Rollo*, pp. 122-124; dated 27 June 2008.

[2] *Id*. at 128; dated 18 June 2009.

[3] See *Guanga v. Dela Cruz,* 519 Phil. 764 (2006).

[4] *Rollo,* p. 170.

[5] *Id*. at 64-65.

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possession of a third party who claims ownership.[6] To dispossess the third party on the strength of a mere *ex parte* possessory writ would be tantamount to a violation of due process.[7]

The *ponencia* now reverses the CA's ruling and affirms the RTC's issuance of a Writ of Possession. It holds that Artemio was not able to sufficiently prove that he was a third party in possession of the subject property.[8]

I respectfully register my dissent.

The legal and jurisprudential basis of the exception.

The legal and jurisprudential antecedents of the issue would facilitate an understanding of the conclusions I have arrived at as discussed below.

The well-settled rule is that in the extrajudicial foreclosure of real estate mortgage under Act No. 3135, the issuance of a writ of possession is ministerial upon the court after the foreclosure sale and during the redemption period. In the latter period, the court may issue an order for a writ of possession upon the mere filing of an *ex parte* motion and the approval of the corresponding bond. A writ of possession also issues as a matter of course without need of a bond or of a separate and independent action after the lapse of the period of redemption and the consolidation of ownership in the purchaser's name.[9]

There are, however, several exceptions to this ministerial duty established by law and jurisprudence.[10] One of the exceptions is that which was first enunciated in *Barican v. Intermediate Appellate Court*[11] in line with Section 33, Rule 39

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[6] *Id*. at 67.

[7] *Id*. at 65-66.

[8] *Ponencia*, p. 14.

[9] *Cabling v. Lumapas,* 736 Phil. 582 (2014).

[10] See *Nagtalon v. UCPB,* 715 Phil. 595 (2013).

[11] 245 Phil. 316 (1988).

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of the Rules of Court: when a third party in possession of the property claims a right adverse to that of the debtor-mortgagor in a foreclosure case. The threshold issue in this case revolves around this particular exception.

The exception was explained further by the Court in *Philippine National Bank v. Court of Appeals*[12] as follows:

> Thus, in *Barican v. Intermediate Appellate Court, we held 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. The same principle was inversely applied in a more recent case, where we ruled that a writ of possession may be issued in an extrajudicial foreclosure of real estate mortgage, **only if the debtor is in possession and no third party had intervened.** Although the factual nuances of this case may slightly differ from the aforecited cases, the availing circumstances are undeniably similar — **a party in possession of the foreclosed property is asserting a right adverse to the debtor/mortgagor and is a stranger to the foreclosure proceedings in which the *ex-parte* writ of possession was applied for.** (Emphases supplied)

From the foregoing, it is apparent that there are three requisites that must concur for the exception to apply:

1. The claimant must be a third party.
2. The claimant must be in actual possession of the subject property.
3. The third party in possession must claim a right adverse to that of the debtor or mortgagor in the foreclosure proceedings.

The vast body of case law on the exception provides an insight into the specifics of each requisite.

Under the *first requisite*, to be considered a third party means that the claimant was a stranger to the foreclosure proceedings.[13]

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[12] 424 Phil. 757, 769 (2002).

[13] *Id*.

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Villanueva v. Cherdan Lending Investors Corporation[14] defines a third party in a more specific manner as one who was a stranger to the mortgage, and who did not participate in the foreclosure proceedings.

Under the *second requisite*, possession is to be understood in its ordinary meaning. That is, the claimant must hold actual possession of the property in a certain and undisputed manner.[15]

The *last requisite* must be understood in light of possession by a third party. To put it simply, the possession must be under a claim adverse to that of the debtor/mortgagor;[16] the third party must be asserting a hold on the property in litigation under a title adverse to that of the debtor/mortgagor.[17] Under this requisite, **a claim or an assertion of an adverse nature is sufficient.**

The **concurrence of the three requisites** as discussed above would result in the application of the exception. Consequently, the ministerial duty of the court to issue an *ex parte* writ of possession ceases. Instead, it is mandated to conduct a hearing to determine the nature of the possession; *i.e.,* whether or not the third party is in possession of the subject property under a claim adverse to that of the judgment debtor.[18] It is in this manner that the issuance of a writ of possession ceases to be *ex parte* and non-adversarial. [19]

The purpose of the hearing was explained in the early case *Saavedra v. Siari Valley Estates*,[20] as follows:

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[14] 647 Phil. 494 (2010).

[15] *Hernandez v. Ocampo,* G.R. No. 181268, 15 August 2016.

[16] *Development Bank of the Phils. v. Prime Neighborhood Association,* 605 Phil. 660 (2009).

[17] *Bank of the Philippine Islands v. Icot,* 618 Phil. 3210 (2009).

[18] *Hernandez v. Ocampo, supra* note 5.

[19] *Okabe v. Saturnino,* G.R. No. 196040, 26 August 2014, 733 SCRA 652.

[20] 106 Phil. 432, 437 (1959); see *Santiago v. Sheriff of Manila*, 77 Phil. 740, 743-44.

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There may be cases when the actual possessor may be claimed to be a privy to any of the parties to the action, or his bona-fide possession may be disputed, or where it is alleged, as in the instant case; that such possession has been taken in connivance with the defeated litigant with a view of frustrating the judgment. In any of these events, **the proper procedure would be to order a hearing on the matter of such possession and to deny or accede to the enforcement of a writ of possession as the finding shall warrant**.

The aforecited rulings of the Court would indicate that a hearing is conducted only to determine **whether or not possession by a third-party claimant is really adverse** for purposes of issuing a writ of possession. **If the possession is adverse within the definition of the law, the court shall defer or quash the issuance of a writ of possession; otherwise, it shall proceed to issue the writ.**

This rule is explained in *Rivero de Ortega v. Natividad,*[21] which reads in relevant part as follows:

But where a party in possession was not a party to the foreclosure, and did not acquire his possession from a person who was bound by the decree, but who is a mere stranger and who entered into possession before the suit was begun, the court has no power to deprive him of possession by enforcing the decree. Thus, it was held that only parties to the suit, persons who came in under them *pendente lite*, and trespassers or intruders without title, can be evicted by a writ of possession. **The reason for this limitation is that the writ does not issue in case of doubt, nor will a question of legal title be tried or decided in proceedings looking to the exercise of the power of the court to put a purchaser in possession. xxx The petitioner, it is held, should be required to establish his title in a proceeding directed to that end**.[22] (Emphases supplied, citations omitted)

Clearly, **the court cannot dispossess the current possessor of the property** who posits an adverse claim through its issuance of a Writ of Possession in the same foreclosure proceedings.

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[21] 71 Phil. 340 (1941).

[22] *Id*. at 342-343.

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In determining whether or not possession is indeed adverse, the court must look into the nature of the possession by the third-party claimant and determine if the latter's claim is indeed adverse, as defined above, and is *bona fide* and in good faith. To provide a better understanding of when possession is adverse, jurisprudence on who is *not* an adverse claimant is informative. In *Planas v. Madrigal & Co*.,[23] the Court held that an adverse claimant must not be a mere transferee or possessor *pendente lite* of the property in question. *Roxas v. Buan* held that a successor-in-interest of the judgment obligor cannot be considered an adverse claimant.[24] In *Rivero de Ortega*,[25] the Court stated that an adverse possessor must be one who did not acquire possession from a person who was bound by the decree; rather, the adverse claimant must be a mere stranger who entered into possession before the foreclosure suit began.

China Banking Corporation v. Spouses Lozada[26] likewise held as follows:

> The exception provided under Section 33 of Rule 39 of the Revised Rules of Court contemplates a situation in which a third party holds the property **by adverse title or right**, such as that of a co-owner, tenant or usufructuary. The co-owner, agricultural tenant, and usufructuary **possess the property in their own right**, and they are not merely the successor or transferee of the **right of possession** of another co-owner or the owner of the property. (Emphases supplied)

In other words, in order not to be ousted by the *ex parte* issuance of a writ of possession, the third party must have possession that proceeds from a right independent of and even superior to that of the judgment debtor/mortgagor.[27] Not only must the property be possessed by a third party; it must also be

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[23] 94 Phil. 754 (1954).

[24] 249 Phil. 41(1988).

[25] *Rivero de Ortega v. Natividad, supra* note 21.

[26] 579 Phil. 454 (2008).

[27] *Id*.

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adversely held by the third party *adversely to the judgment obligor.*[28]

In light of these rulings, it is apparent that the third-party claimant need not prove ownership in the proceedings.[29] All that needs to be shown with a preponderance of evidence is that the third-party claimant is in possession of the property and is asserting a right adverse to that of the debtor/mortgagor with respect to the possession as discussed above. **Once such evidence is shown, the court must defer the issuance of a writ of possession and let the parties file the proper judicial action. The matter of whether or not the third-party claimant is indeed the lawful owner or better possessor of the property is a matter that must be threshed out in a separate proceeding.**[30]

It bears to emphasize that the mandated separate proceeding is founded on the underpinnings of the exception in substantive law, particularly Art. 433 of the Civil Code. Under this provision, as explained in *Philippine National Bank v. Court of Appeals,*[31] one who claims to be the owner of a property possessed by another must bring the appropriate judicial action for its physical recovery. Art. 433 requires **nothing less than an ejectment or *reivindicatory* action** to be brought even by the true owner. After all, the actual possessors of a property enjoy in their favor the legal presumption of a just title, which must be overcome by the party claiming otherwise. An *ex parte* petition for the issuance of a possessory writ under Section 7 of Act No. 3135 is not, strictly speaking, a "judicial process" as contemplated above. Even if the petition may be considered a judicial proceeding for the enforcement of one's right of possession as purchaser in a foreclosure sale, it is not an ordinary suit filed

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[28] *BPI Family Savings Bank, Inc. v. Golden Power Diesel Sales Center, Inc.*, 654 Phil. 382 (2011).

[29] *Royal Savings Bank v. Asia,* 708 Phil. 485 (2013)*; Development Bank of the Phils. v. Prime Neighborhood Association, supra* note 16.

[30] *Development Bank of the Phils. v. Prime Neighborhood Association, id.*

[31] *Supra* note 12.

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in court.[32] In an ordinary lawsuit, one party "sues another for the enforcement or protection of a right, or the prevention or redress of a wrong."

Pursuant to the foregoing discussion, it has been held that the jurisdiction of the court over the proceedings discussed above is limited to the issuance of a writ of possession. It has no jurisdiction to determine who between the parties is the rightful owner and lawful possessor of the property.[33]

The Writ of Possession and the Notice to Vacate were not issued in compliance with law.

The question now is whether Artemio, as substituted by respondents, is a third party in adverse possession of the subject property who is claiming a right adverse to that of Nicolasa, the debtor/mortgagor in the *ex parte* possession case.

The RTC found that he was not. On the other hand, the CA found that he was an adverse possessor and ordered the quashal of the issued writ.

It is submitted that the CA ruling, when tested against the law and jurisprudence cited above, was not in error.

First, Artemio was definitely a third party within the contemplation of the exception. Nowhere in the records does it appear that he was a party to the foreclosure proceedings, from which sprung the petition for the issuance of an *ex parte* writ of possession. In fact, the records indicate that he was apprised of the mortgage only when the sheriff first attempted to implement the Writ of Possession and Notice to Vacate.[34] This attempt supposedly prompted him to file an action for Annulment of Judgment in the *ex parte* writ of possession case.[35]

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[32] *Dayot v. Shell Chemical Co. (Phils.), Inc.,* 552 Phil. 602 (2007).

[33] *Development Bank of the Phils. v. Prime Neighborhood Association, supra* note 16.

[34] *Rollo*, p. 91.

[35] *Id*.

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However, the RTC dismissed without prejudice that action for the Annulment of Judgment for lack of jurisdiction.[36]

Second, the actual possession of the subject property by Artemio is undisputed, as it was affirmed by no less than the second SC judgment.

In the aforementioned Decision, which concerns the ejectment case Artemio had filed against Carmelita, this Court affirmed his possessory rights over the subject property after he was found to be in prior possession thereof.[37] Likewise noted is the issuance of the second SC judgment in 2006, or during the pendency of Peñaflor's application for a writ of possession pursuant to the judgment in the *ex parte* possession case. This simply means that Artemio's possession of the subject property was already subsisting at the time it was extrajudicially foreclosed. The RTC should have noted this fact.

Lastly, Artemio possessed the property under an adverse claim against Nicolasa, the debtor/mortgagor in the foreclosure proceedings, as affirmed by the evidence available before the Court.

The second SC judgment[38] specifically found the following:

1. Artemio had been in long-term possession of the property since 1968.
2. He had a Sales Patent Application over the property in his name dated 2 October 1968.
3. He had Tax Declarations over the property in his name dated 7 January 1969 and 22 May 1989, or prior to the execution of the mortgage and the foreclosure thereof.
4. He had executed mortgages over the property in 1968 and 1973, also prior to the execution of the mortgage and the foreclosure thereof.[39]

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[36] *Id*. at 95.

[37] *Guanga v. Dela Cruz, supra* note 3.

[38] *Id*.

[39] *Rollo*, p. 60.

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The CA was thus correct in ruling as follows:

> We find that petitioners are holding the property adverse to Nicolasa, the judgment obligor. Nowhere is this made clearer than in the evidence submitted by Artemio in Civil Case No. 4605 [ejectment case], which were given probative value by no less than the Supreme Court. The evidence, consisting of Artemio's sales application, the deeds of real estate mortgage and payment of taxes on the property, all indicate that Artemio is claiming ownership of the subject property, which was in his possession at the time.[40]

Likewise noted is the notarized Waiver[41] executed in 1989 by Nicolasa, who thereby renounced all her rights, interests, and participation in favor of Artemio. This Waiver, which strengthened Artemio's adverse claim of ownership, especially against Nicolasa, was executed prior to the bank's mortgage lien.

All these facts indicate that the claim of Artemio was not derived from his relationship with Nicolasa as her heir or successor-in-interest. **Therefore, he was holding the property *in his own right.***

Under the above circumstances, the RTC was without authority to grant the Writ of Possession. It should have desisted from enforcing the writ until a determination as to who, between petitioners and respondents, had the better right to possess the property. **To enforce the writ against an unwitting third-party possessor, who took no part in the foreclosure proceedings, would be tantamount to the taking of real property without the benefit of proper judicial intervention.**[42]

Petitioners cannot invoke Peñaflor's title in the *ex parte* proceeding; they must resort to the appropriate judicial process in order to recover the property. As correctly concluded by the CA, the correct remedy is not the implementation of the Writ of Possession, but petitioners' institution of ejectment proceedings or a *reivindicatory* action.[43]

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[40] *Id*. at 64.

[41] *Id*. at 170.

[42] *Philippine National Bank v. Court of Appeals, supra* note 12.

[43] *Rollo,* p. 67.

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Whatever arguments petitioners have raised to prove their supposed rightful possession or ownership of the property are matters that should be threshed out in an appropriate action filed specifically for their resolution.[44] In the writ of possession case, the RTC had no jurisdiction to determine who between the parties was entitled to ownership and possession of the foreclosed property.[45]

The Waiver was not Artemio's source of title over the subject property.

One of the arguments raised in the *ponencia* is that a mere waiver of rights is not an effective mode of transferring ownership under the law.[46] This argument is premised on the position that the Waiver executed by Nicolasa in favor of Artemio back in 1989 was the source of his claim of ownership.

However, the Waiver was not the basis of the claim of Artemio. The CA ruled that the Waiver simply fortified his claim over the property, especially against Nicolasa. It was the totality of evidence, as appreciated by the CA, that showed that he was clearly an adverse third-party possessor of the subject property. The evidence included the second SC judgment itself affirming his possession over the subject property.

In fact, this Court found in that case that "[Artemio] presented enough evidence proving his prior possession of the Property independent of the Waiver."[47] To put it simply, his adverse claim — specifically one of ownership — was founded on his long-term possession of the subject property together with his other acts of ownership executed over it.

It must also be emphasized that Nicolasa could not have possibly been Artemio's source of claim of ownership over

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[44] *Royal Savings Bank v. Asia, supra* note 29.

[45] *Philippine National Bank v. Court of Appeals, supra* note 12.

[46] *Ponencia*, pp. 8-10.

[47] *Guanga v. Dela Cruz, supra* note 3 at 773.

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the subject property, as she herself had no title thereto in her name. Further, she was never shown to have actually possessed the subject property at any time. Her supposed right thereto was based on (1) a Sales Patent Application, which in the ejectment case was found by this Court to be undated; and (2) Tax Declarations which, however, failed to clearly indicate that it was Nicolasa, not Artemio, who had first declared the property for tax purposes.[48]

Further, the assailed Waiver[49] reads as follows:

> That I, NICOLASA DELA CRUZ, of legal age, Filipino, widow and residing at No. 11 Ifugao St. Barretto, Olongapo City, Philippines, do hereby by these presents, freely and irrevocably WAIVE, RENOUNCE, TRANSFER and QUITCLAIM all my rights, interests and participation over a parcel of residential lot including all the existing improvements thereon, x x x:
>
> x x x x x x x x x
>
> x x x in favor of my son ARTEMIO DELA CRUZ, xxx the above-described property free from all liens and encumbrances;
>
> That I hereby warrant peaceful possession of the above-described property herein waived, binding myself to defend him, his heirs, successors, assigns from any lawful claims of any person whomsoever.[50]

Nowhere in the Waiver was it stated that Nicolasa owned the subject property, and that she was transferring ownership thereof to Artemio. Rather, she simply renounced all her rights, interests, and participation in his favor. It is understood that she did so on account of the finding in the ejectment case that she had previously attempted to apply for a sales patent for herself. It was also found that she even had Tax Declarations in her name over the subject property, but that these were insufficient to debunk the documents of Artemio proving his

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[48] *Id*.

[49] *Rollo*, p. 170.

[50] *Id*.

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claim over the property. The Waiver simply indicates that Nicolasa had previously laid claim over the subject property, but that she is now letting go of her claim in favor of Artemio. Therefore, at the very least, the Waiver establishes his claim of ownership specifically against that of Nicolasa, the debtor/mortgagor in the foreclosure proceedings.

The factual findings in the ejectment case were properly considered.

While the documentary evidence under consideration (*i.e.* the Sales Patent Application, Deeds of Real Estate Mortgage, Tax Declarations, and Waiver) do not, on their own, conclusively prove the ownership of Artemio over the subject property, together they indicate his adverse claim thereto, especially against Nicolasa.

As has been said, all that third-party claimants in foreclosure proceedings need to show is that they are in possession, and that their possession is adverse to the claim of the judgment obligor. In other words, they simply have to show that they have a valid claim of ownership together with their possession, not that they in fact have ownership.[51]

Here, the second SC judgment itself shows, at the very least, that Artemio has indisputably been in possession of the subject property since 1968. The *ponencia* points out that the second SC judgment was limited to the issue of possession against his sister, Carmelita. Nevertheless, possession of the property by Artemio gives him a presumptive title over it, considering that the debtor/mortgagor (Nicolasa) did not have any title in her name and was not in possession of the property at the time she mortgaged it. *Development Bank of the Philippines v. Prime Neighborhood Association*[52] has ruled that **a third party's possession of the property is legally presumed to be pursuant to a just title**. It must be borne in mind that the foregoing

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[51] *Development Bank of the Phils. v. Prime Neighborhood Association, supra* note 16.

[52] *Id*.

legal presumption may be overcome by the purchaser only in a judicial proceeding for recovery of the property.

It is noteworthy that the second SC judgment case involves the same property. The ejectment case therein was also filed against the sister of Artemio, who is involved in the present case as the one who mortgaged the property on behalf of their mother, Nicolasa. Lastly, the ruling in favor of Artemio, while primarily focused on his right of possession, was based on a set of documents asserting his claim of ownership over the subject property. Consequently, the relevance of the ejectment case to the one presently before us cannot be denied.

It is not surprising, therefore, for the CA to find that this act of filing the ejectment case and pursuing it through four different courts establishes, to a large extent, that Artemio's claim of ownership is "far from being a mere ruse to prevent the implementation of the writ of possession and frustrate the effects of the mortgage executed in favor of [Peñaflor]."[53]

On this note, it is worthy to address the due process arguments raised.[54] Indeed, the documents that formed the basis of the second SC judgment were not submitted and considered before the court *a quo*. Rather, what was submitted to the lower court was the second SC judgment itself.

A review of the facts would show that, through a Very Urgent Omnibus Motion,[55] Artemio presented before the RTC the second SC judgment to prove his status as a third-party claimant. The facts also show that Peñaflor, through counsel, was able to oppose that motion.[56]

Thus, contrary to the *ponencia's* concern, the right of Penaflor to due process was not violated in the course of the proceedings

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[53] *Rollo*, p. 65.

[54] *Ponencia*, p. 11.

[55] *Rollo*, p. 28.

[56] *Id*.

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below. He was able to examine, object to, and set up his defense as against that particular Decision of the Court, the implications of which could have guided the trial court in determining the status of Artemio as an adverse possessor of the subject property.

The records affirm the veracity of Artemio's adverse claim.

The *ponencia* points out certain parts of the records that supposedly diminish the veracity of Artemio's claim.[57]

At the outset, it cannot be emphasized enough that a third party claiming ownership of the subject property need not prove the validity of the claim in the proceedings for the issuance of a writ of possession. What needs to be shown is simply possession of an adverse character as against the claim of the debtor/mortgagor in the foreclosure case. In other words, what needs to be shown is a *bona fide* claim, not proof of ownership *per se*. The veracity or truth of that claim must be threshed out in a separate proceeding, as discussed above.

At any rate, it is submitted that the circumstances pointed out do not diminish the adverse nature of Artemio's claim over the property.

First, in his case for Annulment of Judgment, Artemio's claim that Nicolasa did not own the subject property was not inconsistent with respondents' claim in the present case that Nicolasa transferred her rights over the property through a Waiver. As discussed above, the Waiver was not the primary source of the right of Artemio over the property. Also, nowhere in the Waiver is it mentioned that Nicolasa owned the property or was transferring ownership thereof to him.

Second, the separate Motions to Quash filed by the siblings of Artemio cannot be taken against him, as he did not join them in their motions for the reason that his own Motion to Quash was founded on a different ground. Instead of banking on his father's share in the subject property, he grounded his motion

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[57] *Ponencia*, pp. 13-14.

on his own claim of ownership.[58] It is this claim that he has been asserting since Day One; that is, through the filing of his action for Annulment of Judgment.

Third, there was a reason why it took Artemio seven years from the mortgage of the subject property to file the ejectment complaint. Prior to filing that case, he had filed the earlier Complaint for Annulment of Judgment in the *ex parte* possession case decided in Penaflor's favor. Unfortunately, that Complaint was dismissed only in March 1998,[59] prompting Artemio to immediately file an ejectment case against his sister in April 1998. Instead of engendering doubt, these events further affirm the CA's conclusion that his unwavering acts to defend his claim over the property, including the "filing of [the ejectment case] and seeing it through four different courts xxx establishes to a large extent that his claim of ownership is far from being a mere ruse to prevent the implementation of the writ of possession and frustrate the effects of the mortgage executed in favor of [Peñaflor]."[60]

CONCLUSION

There is no dispute that the law puts a premium to the mortgagee who has already consolidated the title to the subject property. But the law also protects the actual possessor of a property under a claim of ownership[61] as clearly articulated in Art. 433 of the Civil Code. This provision underpins the issue involved in the present case. Artemio has been shown to be such a possessor.

I submit that it would be premature, unwarranted, and, ultimately unjust if, on the basis of doubts as to the source of his ownership over the subject property, Artemio were to be deprived of the right to defend his claim over it in a separate action. This is a matter that must be properly threshed out in a separate judicial proceeding as required by Art. 433.

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[58] *Rollo*, p. 61.

[59] *Id*. at 90-95.

[60] *Id*. at 65.

[61] *Unchuan v. CA*, 244 Phil. 733 (1988).

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It must be emphasized that all that the exception does is make the RTC defer the issuance of a writ of possession and allow the parties to thresh out their claim in a proper judicial proceeding. The exception does not in any way nullify or affect the mortgagee's consolidated title.

WHEREFORE, I vote to **DENY** the Petition. The Court of Appeals Decision[62] and Resolution[63] in CA-G.R. SP No. 110392 should be **AFFIRMED.**

SECOND DIVISION

[G.R. No. 201306. August 9, 2017]

LYDIA LAO, JEFFREY ONG, HENRY SY, SY TIAN TIN, SY TIAN TIN, JR., AND PAUL CHUA, *petitioners, vs.* **YAO BIO LIM AND PHILIP KING,** *respondents*.

SYLLABUS

1. REMEDIAL LAW; APPEALS; APPEAL BY *CERTIORARI* TO THE SUPREME COURT; RULE THAT FACTUAL FINDINGS OF THE COURT OF APPEALS ARE NOT REVIEWABLE BY THE SUPREME COURT IS SUBJECT TO CERTAIN EXCEPTIONS.— The rule that factual findings of the Court of Appeals are not reviewable by this Court is subject to certain exceptions, such as when the inference made is manifestly mistaken and when the "findings of fact are conclusions without citation of specific evidence on which they are based."

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[62] Dated 18 February 2011.

[63] Dated 8 July 2011.