

THIRD DIVISION

[**G.R. No.195445, December 07, 2016**]

ANGELINA DE GUZMAN, GILBERT DE GUZMAN, VIRGILIO DE GUZMAN, JR., AND ANTHONY DE GUZMAN, PETITIONERS, V. GLORIA A. CHICO, RESPONDENT.

DECISION

JARDELEZA, J.:

Before us is a petition for review^[1] under Rule 45 of the Rules of Court. Petitioners seek the review of the January 31, 2011 Decision^[2] of the Court of Appeals (CA) in CA-G.R. SP No. 114103 for being contrary to law and jurisprudence. The CA affirmed the Order^[3] of the Regional Trial Court (RTC), Branch 59, Makati City in LRC Case No. M-5188 dated January 19, 2010 which denied the petitioners' Urgent Motion to Cite Petitioner in Contempt and to Nullify Proceedings, and the Order^[4] of the RTC dated April 19, 2010 which denied petitioners' Motion for Reconsideration.

The Facts

The subject of this case is a property situated at 7-A 32 A. Bonifacio Street, Bangkal, Makati City, previously registered under the name of petitioners, and covered by Transfer Certificate of Title (TCT) No. 164900.^[5]

On May 24, 2006, the property was sold at a public auction of tax delinquent properties conducted by the City Government of Makati City pursuant to Sections 254 to 260 of the Local Government Code. Respondent was the winning bidder at the public auction, and the City Government of Makati executed a Certificate of Sale in her favor on even date.^[6]

Petitioners failed to redeem the property within the one-year period. Thus, on July 12, 2007, respondent filed with the RTC of Makati City an application for new certificate of title under Section 75^[7] in relation to Section 107^[8] of Presidential Decree (PD) No. 1529 or the Property Registration Decree (LRC Case No. M-4992).^[9] On December 28, 2007, after hearing, the RTC ordered that the title over the property be consolidated and transferred in the name of respondent. The Register of Deeds of Makati consequently

cancelled TCT No. 164900 and issued a new one, TCT No. T-224923, in favor of respondent.^[10] Afterwards, in the same court, respondent moved for the issuance of a writ of possession. The motion was, however, denied by the court for failure to set the motion for hearing.^[11]

On January 14, 2009, respondent, once again, filed (for the same property), an *Ex Parte* Petition for the Issuance of a Writ of Possession^[12] (LRC Case No. M-5188) with the RTC of Makati City. This *ex parte* petition was raffled to Branch 59 (court *a quo*).^[13]

On April 1, 2009, the court *a quo* issued an Order^[14] granting respondent's *ex parte* petition and ordered the issuance of a writ of possession in her favor. The writ was subsequently issued on August 7, 2009.^[15]

On August 28, 2009, petitioners filed an urgent motion to cite respondent in contempt, and to nullify the proceedings on the ground that LRC Case No. M-5188 contained a defective/false verification/certification of non-forum shopping.^[16]

On September 11, 2009, respondent filed her comment/opposition. She alleged that petitioner's objection to the certification against forum shopping was deemed waived for failure to timely object thereto. She also claimed that forum shopping does not exist.^[17]

On January 19, 2010, the court *a quo* issued an Order^[18] denying petitioners' motion. It ruled that the *ex parte* petition for the issuance of a writ of possession filed by respondent in LRC Case No. M-5188, although denominated as a petition, is not an initiatory pleading, and, thus, does not require a certificate of non-forum shopping. Thus, in the same Order, the court *a quo* ruled that petitioners' motion to present respondent and her counsel as witnesses is without merit.^[19] Petitioner filed a motion for reconsideration, but it was denied in an Order^[20] dated April 19, 2010.

Aggrieved, petitioners filed a special civil action for *certiorari* before the CA to annul the January 19, 2010 and April 19, 2010 Orders of the court *a quo*. They averred that it acted with grave abuse of discretion in issuing the assailed orders.^[21] Petitioners further alleged that the tax auction sale proceeding is governed by Sections 246 to 270 of the Local Government Code, and not by Act No. 3135^[22] as relied upon by respondent.^[23]

On January 31, 2011, the CA rendered a Decision dismissing the petition and affirming the challenged Orders of the court *a quo*, to wit:

WHEREFORE, the instant petition is DISMISSED for lack of merit. The challenged *orders* dated January 19, 2010 and April 19, 2010 are hereby **AFFIRMED**.^[24]

The CA ruled that there is no forum shopping. Prior to the filing of the *ex parte* petition in LRC Case No. M-5188, RTC Branch 62 has already denied respondent's motion for issuance of a writ of possession in LRC Case No. M-4992. The CA added that there can be no forum shopping because the issuance of a writ of possession is a ministerial function and is summary in nature, thus, it cannot be said to be a judgment on the merits but simply an incident in the transfer of title.^[25]

The CA also said that a certificate of non-forum shopping is required only in complaints or other initiatory pleadings. A petition or motion for issuance of a writ of possession is not a complaint or initiatory pleading which requires a verification and certificate of non-forum shopping.^[26]

Lastly, the CA rejected petitioners' argument that the tax auction sale proceeding is governed by Sections 246 to 270 of the Local Government Code, and not by Act No. 3135. It explained that the issue was raised by petitioners for the first time on appeal, and the decision finding the respondent as the lawful and registered owner of the property by virtue of the public auction has long become final and executory and beyond the ambit of judicial review.^[27]

Petitioners appealed the Decision of the CA to this Court by way of a petition for review on *certiorari*.

Petitioners' Arguments

Petitioners aver that the CA committed reversible error in:

- (a) Ruling that because of Section 7 of Act No. 3135, a certification of non-forum shopping was unnecessary in the *ex parte* petition, and thus it was unnecessary to examine respondent Chico and her counsel on said certification; and
- (b) Not ruling conformably with Article 433 of the Civil Code and the cases of *Factor v. Martel, Jr.*,^[28] *Serra Serra v. Court of Appeals*,^[29] and *Maglente v. Baltazar-Padilla*^[30] that:
 - (i) The certification of non-forum shopping was required in the *ex-parte* petition;
 - (ii) All proceedings in LRC Case No. M-5188 should have been in the nature of an *accion reivindicatoria*; and
 - (iii) Consequently, said proceedings were void, being summary and in the nature of proceedings for an *ex parte* motion.^[31]

Respondent's Arguments

In her Comment,^[32] respondent insists that a certification of non-forum shopping is not necessary in this case because an *ex parte* petition for the issuance of a writ of possession is not an action, complaint, or an initiatory pleading. She avers that although denominated as a petition, the *ex parte* petition is actually in the nature of a motion, whose office is not to initiate new litigation, but to bring a material but incidental matter arising in the progress of the case, in this case, the registration proceedings.^[33] Respondent also denies committing forum shopping, and instead posits that it is petitioners who are guilty of forum shopping. Respondent notes that in this petition, petitioners' arguments center on the alleged nullity of the writ of possession itself which is likewise subject of another petition before the Court of Appeals docketed as CA-G.R SP No. 110654.^[34]

Respondent likewise argues that Article 433 of the New Civil Code has no application to a buyer of property in a tax delinquency sale. Respondent contends that the cases petitioner cited do not involve actions pertaining to tax delinquency sales, and that they could not, in fact, identify a particular provision of law or jurisprudence saying that a buyer in a tax delinquency sale has to file an independent action to be able to take possession of the property he bought in a tax delinquency sale.^[35]

The Court's Ruling

We deny the petition.

No certificate against forum shopping is required in a petition or motion for issuance of a writ of possession.

We affirm the ruling of the CA that a certificate against forum shopping is not a requirement in an *ex parte* petition for the issuance of a writ of possession. An *ex parte* petition for the issuance of writ of possession is not a complaint or other initiatory pleading as contemplated in Section 5,^[36] Rule 7 of the 1997 Rules of Civil Procedure.^[37]

The non-initiatory nature of an *ex parte* motion or petition for the issuance of a writ of possession is best explained in *Arquiza v. Court of Appeals*.^[38] In that case we ruled that the *ex parte* petition for the issuance of a writ of possession filed by the respondent is not an initiatory pleading. Although the private respondent denominated its pleading as a petition, it is, nonetheless, a motion. What distinguishes a motion from a petition or other pleading is not its form or the title given by the party executing it, but rather its purpose.

^[39] A petition for the issuance of a writ of possession does not aim to initiate new litigation, but rather issues as an incident or consequence of the original registration or cadastral proceedings. As such, the requirement for a forum shopping certification is dispelled.^[40]

We also cannot subscribe to petitioners' narrow view that only cases covered by foreclosure sales under Act No. 3135 are excused from the requirement of a certificate against forum shopping.

Based on jurisprudence, a writ of possession may be issued in the following instances: (a) land registration proceedings under Section 17 of Act No. 496, otherwise known as The Land Registration Act; (b) judicial foreclosure, provided the debtor is in possession of the mortgaged realty and no third person, not a party to the foreclosure suit, had intervened; (c) extrajudicial foreclosure of a real estate mortgage under Section 7 of Act No. 3135, as amended by Act No. 4118; and (d) in execution sales.^[41]

We note that there is no law or jurisprudence which provides that the petition for the issuance of a writ of possession depends on the nature of the proceeding in which it is filed. Thus, we find no logical reason for petitioners' contention that only cases covered by Act No. 3135 are exempt from the requirement of a certificate against forum shopping. As explained in the previous paragraphs, by its very nature, a writ of possession is a mere incident in the transfer of title. It is an incident of ownership, and not a separate judgment. It would thus be absurd to require that a petition for the issuance of this writ to be accompanied by a certification against forum shopping.

The issuance of a writ of possession is warranted.

Petitioners cite the rulings in *Factor v. Martel, Jr.*, *Serra Serra v. Court of Appeals*, and *Maglente v. Baltazar-Padilla* to justify their position that respondent availed of the wrong remedy when she filed an *ex parte* petition for issuance of a writ of possession. Petitioners contend that this is a departure from the proper procedure which required the filing of an appropriate case for *accion reivindicatoria*.

Respondent, on the other hand, argues that the cases petitioner cited do not involve actions pertaining to tax delinquency sales. Respondent adds that petitioners could not, in fact, identify a particular provision of law or jurisprudence saying that a buyer in a tax delinquency sale has to file an independent action to be able to take possession of the property he brought in a tax delinquency sale.

We agree with respondent.

Factor involves the issuance of a writ of possession pursuant to an original action for registration; *Serra Serra* involves a petition for reconstitution; while *Maglente* involves an action for interpleader. These rulings cannot apply in this case. For one, none of them contemplate the present situation where the action is between, on the one hand, the previous registered owner of the parcel of land; and on the other, the buyer in a tax delinquency sale. Second, none of these cases involves the right of a purchaser in a tax delinquency sale for the issuance of a writ of possession after the redemption period.

Contrary therefore, to petitioners' contentions, the CA did not err in upholding the writ of

possession in this case. In *St. Raphael Montessori School, Inc. v. Bank of the Philippine Islands*,^[42] an action involving the application of Act No. 3135, this Court recognized that the writ of possession was warranted not merely on the basis of the law, but ultimately on the right to possess as an incident of ownership. The right to possess a property merely follows the right of ownership, and it would be illogical to hold that a person having ownership of a parcel of land is barred from seeking possession.^[43] Precisely, the basis for the grant of the writ of possession in this case is respondent's ownership of the property by virtue of a tax delinquency sale in her favor, and by virtue of her absolute right of ownership arising from the expiration of the period within which to redeem the property.^[44]

In *Cloma v. Court of Appeals*,^[45] the City of Pasay sold the property of Spouses Cloma at public auction for tax delinquency. Private respondent Nocom was declared the winning bidder of the sale, for which he was issued a certificate of sale. The spouses failed to redeem the property within the prescribed period, and a final deed of sale was issued in favor of Nocom. Thus, Nocom filed a petition invoking Section 75 of PD No. 1529 (as in this case),^[46] which was granted. Accordingly, Nocom applied for a writ of possession over the property, and was eventually granted by the trial court. The spouses argued that the trial court cannot issue the writ of possession. This Court rejected this argument, citing Section 2 of PD No. 1529. This Court said:

Section 2 of PD 1529 also clearly rejects the thesis of petitioners that the trial court cannot issue a writ of possession to effectuate the result of a tax sale, thus:

"Sec 2. Nature of registration of proceedings; jurisdiction of courts.
— x x x Courts of First Instance shall have exclusive jurisdiction over all applications for original registration of title, to land, including improvements and interests therein, and over all petitions filed after original registration of title, *with power to hear and determine all questions arising upon such* applications or petitions. x x x" (Emphasis in the original.)^[47]

More, respondent's ownership over the property is affirmed by the final and executory judgment in LRC Case No. M-4992.^[48] To be clear, a writ of possession is defined as a writ of execution employed to enforce a judgment to recover the possession of land, commanding the sheriff to enter the land and give its possession to the person entitled under the judgment.^[49]

In the same vein, we note the finding of the court *a quo* in granting the ex parte petition for the issuance of writ of possession of respondent, thus:

Facts of the case reveal that the Regional Trial Court of Makati City, Branch 62, rendered a Decision under LRC Case No. M-4992 which granted Chico's Petition for Application for a New Certificate of Title under Sec. 75 in relation

to Sec. 107 of the Property Registration Decree. Said Decision became final and executory on 27 February 2008.

Sec. 6, Rule 135 of the Rules of Court succinctly provides that when by law jurisdiction is conferred on a court or judicial officer, all ancillary writs, processes and other means necessary to carry it into effect may be employed by such court or officer, and if the procedure to be followed in the exercise of such jurisdiction is not specifically pointed out by law or by these rules, any suitable process or mode of proceeding may be adopted which appears conformable to the spirit of said law or rules.^[50]

The reason for the premature issuance of the writ of possession in *Republic (Department of Transportation and Communication [DOTC]) v. City of Mandaluyong*^[51] does not obtain in this case. In *Republic*, the Metro Rail Transit Corporation failed to pay the real property taxes due to the City of Mandaluyong, hence a public auction was conducted. For lack of bidders, the real properties were forfeited in favor of the city. The period for the redemption of the real properties expired, thus a final deed of sale was issued in the city's favor. By virtue of this final deed of sale, the city filed an *ex parte* petition for the issuance of a writ of possession, which the regional trial court granted. The DOTC questioned the propriety of the issuance of the writ of possession. While this Court held that a writ of possession is a mere incident in the transfer of title, and which may arise from ownership by virtue of a tax delinquency sale, we nonetheless ruled that the issuance of the writ was premature. The reason being, there was still a pending issue on whether the auction sale should proceed, in the first place.^[52]

This impediment does not exist in this case precisely because title has already been consolidated, and a new certificate of title has already been issued in the name of respondent in LRC Case No. M-4992. More, unlike in *Republic*, records of this case already established that the Decision in LRC Case No. M-4992 has long become final and executory, as evidenced by the Entry of Judgment issued on March 3, 2008.^[53] Hence, the issuance of a writ of possession is warranted. As the trial court ruled, "[a]ll things considered, the petitioner is now the lawful registered owner of the subject property and by virtue of law, is entitled to the issuance of a Transfer Certificate of Title in her name."^[54]

Finally, petitioners cannot attack the validity of the proceedings in LRC Case No. M-4992. Having become final and executory, the judgment in LRC Case No. M-4992 can only be nullified in a petition for annulment of judgment, which petitioner did not do. The general rule is that a final and executory judgment can no longer be disturbed, altered, or modified in any respect, and that nothing further can be done but to execute it. A final and executory decision may, however, be invalidated *via* a petition for relief or a petition to annul the same under Rules 38 or 47, respectively, of the Rules of Court.^[55]

WHEREFORE, the petition is **DENIED**. The Decision dated January 31, 2011 of the Court of Appeals in CA-G.R. SP No. 114103 is hereby **AFFIRMED**.

SO ORDERED.

Velasco, Jr., (Chairperson), Peralta, Perez and Reyes, JJ., concur.

December 22, 2016

NOTICE OF JUDGMENT

Sirs / Mesdames:

Please take notice that on **December 7, 2016** a Decision, copy attached hereto, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on December 22, 2016 at 9:41 a.m.

Very truly yours,

**(SGD) WILFREDO V.
LAPITAN**
Division Clerk of Court

[1] *Rollo*, pp. 3-32.

[2] *Id.* 34-43; penned by Associate Justice Amelita G. Tolentino and concurred in by Associate Justices Normandie B. Pizarro and Ruben C. Ayson.

[3] *CA rollo*, pp. 61-63.

[4] *Id.* at 69.

[5] *Rollo*, p. 35.

[6] *Id.*

[7] Section 75. *Application for new certificate upon expiration of redemption period.* - Upon the expiration of the time, if any, allowed by law for redemption after registered land has been sold on execution taken or sold for the enforcement of a lien of any description, except a mortgage lien, the purchaser at such sale or anyone claiming under him may petition the court for the entry of a new certificate of title to him.

[8] Section 107. *Surrender of withhold duplicate certificates.*- Where it is necessary to issue a new certificate of title pursuant to any involuntary instrument which divests the title of

the registered owner against his consent or where a voluntary instrument cannot be registered by reason of the refusal or failure of the holder to surrender the owner's duplicate certificate of title, the party in interest may file a petition in court to compel surrender of the same to the Register of Deeds. The court, after hearing, may order the registered owner or any person withholding the duplicate certificate to surrender the same, and direct the entry of a new certificate or memorandum upon such surrender. If the person withholding the duplicate certificate is not amenable to the process of the court, or if not any reason the outstanding owner's duplicate certificate cannot be delivered, the court may order the annulment of the same as well as the issuance of a new certificate of title in lieu thereof. Such new certificate and all duplicates thereof shall contain a memorandum of the annulment of the outstanding duplicate.

[9] LRC Case No. M-4992 was raffled to Branch 62, RTC Makati City. *Rollo*, pp. 35; 45-50.

[10] *Id.* at 35.

[11] *Id.* at 117.

[12] *Id.* at 74-80.

[13] *Id.* at 35.

[14] *Id.* at 98-100.

[15] *Id.* at 35-36;

[16] *Id.* at 36; 81-87.

[17] *Id.* at 36; *CA rollo*, pp. 43-52.

[18] *Supra* note 3.

[19] *CA rollo*, pp. 61; 63.

[20] *Id.* at 69.

[21] *Rollo*, pp. 34; 37.

[22] An Act to Regulate the Sale of Property under Special Powers Inserted In or Annexed To Real Estate Mortgages (1924).

[23] *Rollo*, p. 37.

[24] *Id.* at 42-A.

[25] *Id.* at 38.

[26] *Id.* at 38-39.

[27] *Id.* at 41.

[28] G.R. No. 161037, February 4, 2008, 543 SCRA 549.

[29] G.R. No. 34080, March 22, 1991, 195 SCRA 482.

[30] G.R. No. 148182, March 7, 2007, 517 SCRA 643.

[31] *Rollo*, p. 16.

[32] *Id.* at 115-122.

[33] *Id.* at 118-120.

[34] *Id.* at 121.

[35] *Id.* at 120-121.

[36] Sec. 5. *Certification against forum shopping.* The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or noncompliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative

sanctions.

[37] *Rollo*, pp. 38-39.

[38] G.R. No. 160479, June 8, 2005, 459 SCRA 753.

[39] *Id* at 762.

[40] *Id* at 763.

[41] *Sia v. Arcenas*, G.R. Nos. 209672-74, January 14, 2015, 746 SCRA 272, 283-284.

[42] G.R. No. 184076, October 21, 2015, 773 SCRA 419.

[43] *Id.* at 429-430, citing *Edralin v. Philippine Veterans Bank*, G.R. No. 168523, March 9, 2011, 645 SCRA 75.

[44] LOCAL GOV'T CODE, Sec. 261 and Sec. 262 in relation to Sec. 33, Rule 39 of the Rules of Court.

LOCAL GOV'T CODE, Sec. 261. *Redemption of Property Sold.* - Within one (1) year from the date of sale, the owner of the delinquent real property or person having legal interest therein, or his representative, shall have the right to redeem the property upon payment to the local treasurer of the amount of the delinquent tax, including the interest due thereon, and the expenses of sale from the date of delinquency to the date of sale, plus interest of not more than two percent (2%) per month on the purchase price from the date of sale to the date of redemption. Such payment shall invalidate the certificate of sale issued to the purchaser and the owner of the delinquent real property or person having legal interest therein shall be entitled to a certificate of redemption which shall be issued by the local treasurer or his deputy.

From the date of sale until the expiration of the period of redemption, the delinquent real property shall remain in the possession of the owner or person having legal interest therein who shall be entitled to the income and other fruits thereof.

The local treasurer or his deputy, upon receipt from the purchaser of the certificate of sale, shall forthwith return to the latter the entire amount paid by him plus interest of not more than two percent (2%) per month. Thereafter, the property shall be free from the lien of such delinquent tax, interest due thereon and expenses of sale.

LOCAL GOV'T CODE, Sec. 262. *Final Deed to Purchaser.* - In case the owner

or person having legal interest therein fails to redeem the delinquent property as provided herein, the local treasurer shall execute a deed conveying to the purchaser said property, free from lien of the delinquent tax, interest due thereon and expenses of sale. The deed shall briefly state the proceedings upon which the validity of the sale rests.

RULES OF COURT, Rule 39, Sec. 33. *Deed and possession to be given at expiration of redemption period; by whom executed or given.* If no redemption be made within one (1) year from the date of the registration of the certificate of sale, the purchaser is entitled to a conveyance and possession of the property; or, if so redeemed whenever sixty (60) days have elapsed and no other redemption has been made, and notice thereof given, and the time for redemption has expired, the last redemptioner is entitled to the conveyance and possession; but in all cases the judgment obligor shall have the entire period of one (1) year from the date of the registration of the sale to redeem the property. The deed shall be executed by the officer making the sale or by his successor in office, and in the latter case shall have the same validity as though the officer making the sale had continued in office and executed it. (Underscoring ours.)

x x x

[45] G.R. No. 100153 August 2, 1994, 234 SCRA 665.

[46] See note 7.

[47] *Cloma v. Court of Appeals, supra* at 672.

[48] RULES OF COURT, Rule 39, Sec. 10. Section 10 provides:

Sec. 10. *Execution of judgments for specific act.*

(a) *Conveyance, delivery of deeds, or other specific acts; vesting title.*- If a judgment directs a party to execute a conveyance of land or personal property, or to deliver deeds or other documents, or to perform any other specific act in connection therewith, and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court and the act when so done shall have like effect as if done by the party. If real or personal property is situated within the Philippines, the court in lieu of directing a conveyance thereof may by an order divest the title of any party and vest it in others which shall have the force and effect of a conveyance executed in due form of law.

[49] *Sia v. Arcenas, supra* note 41, citing *Metropolitan Bank & Trust Company v. Abad Santos*, G.R. No. 157867, December 15, 2009, 608 SCRA 222, 232. Underscoring ours.

[50] *Rollo*, p. 102.

[51] G.R. No. 184879, February 23, 2011, 644 SCRA 269.

[52] *Id.* at 276-277.

[53] *Rollo*, p. 71.

[54] *Id.* at 69.

[55] *Genato Investments, Inc. v. Barrientos*, G.R. No. 207443, July 2014, 731 SCRA 35, 42, citing *Gochan v. Mancao*, G.R. No. 182314, November 13, 2013, 709 SCRA 438.