



SUPREME COURT OF THE PHILIPPINES  
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**Republic of the Philippines**  
**Supreme Court**  
**Manila**

**FIRST DIVISION**

**JOSE P. JAYAG and**  
**MARILYN P. JAYAG,**  
*Petitioners,*

**G.R. No. 222503**

Present:

- versus -

GESMUNDO, C.J., *Chairperson,*  
CAGUIOA,  
LAZARO-JAVIER,  
LOPEZ, M., and  
LOPEZ, J., *JJ.*

**BDO UNIBANK, INC.,**  
**EX-OFFICIO SHERIFF,**  
**and/or ASSIGNED SHERIFF,**  
*Respondents.*

Promulgated:

**SEP 14 2021** *mtbs/ful*

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**DECISION**

**GESMUNDO, C.J.:**

After a thorough review of the available records and relevant law and jurisprudence, this Court resolves to DENY the present Petition for Review<sup>1</sup> under Rule 45 of the Rules of Court assailing the January 18, 2016 Decision<sup>2</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 140591 for failure to show any reversible error committed by the CA.

*Antecedents*

In 2005, spouses Jose P. Jayag and Marilyn P. Jayag (*petitioners*) applied for and were granted a loan in the amount of ₱1,700,000.00 from

<sup>1</sup> *Rollo*, pp. 3-14.

<sup>2</sup> *Id.* at 15-23; penned by Associate Justice Remedios A. Salazar-Fernando (now Presiding Justice of the Court of Appeals) with Associate Justices Priscilla J. Baltazar-Padilla and Socorro B. Inting, concurring.

the Rural Bank of San Juan, Inc. (*RBSJ*), with stipulated interest of 18% *per annum* and penalty charge of 5% per month in the case of default in the payment of amortizations. In 2006, they availed of a ₱500,000.00 loan from the paid-up portion of the 2005 loan under the same terms and conditions. Both loans had the maturity date of September 24, 2010. As security for the credit accommodation, petitioners executed on September 14, 2005 a Mortgage Agreement over their property covered by Transfer Certificate of Title (*TCT*) No. 218703 of the Registry of Deeds of Makati City. A subsequent loan of ₱1,000,000.00 was also granted to petitioners, but this was secured by their time deposit of ₱1,000,000.00 with RBSJ.<sup>3</sup>

From October 2007 to July 2010, petitioners made payments to RBSJ. On July 24, 2012, RBSJ assigned all its rights and interest over petitioners' loan account to respondent Banco De Oro, Inc. (*BDO*). Petitioners sought restructuring of their loan with BDO, but a dispute arose in reconciling the computations of the balance based on RBSJ's statement of account and petitioners' own ledger account.<sup>4</sup>

On February 8, 2013, BDO filed a Petition for Extrajudicial Foreclosure Sale with the Office of the Clerk of Court and *Ex-Officio* Sheriff of the Regional Trial Court (*RTC*) of Makati City, due to the alleged failure of petitioners to pay the outstanding loan balance of ₱4,699,956.67, inclusive of interest, penalties and other charges.<sup>5</sup>

A public auction sale was conducted on April 3, 2013 wherein BDO won as the highest bidder, and accordingly a Certificate of Sale was issued in its name on April 25, 2013. The period of redemption was set to expire on July 5, 2014 or one year from the date of registration of the certificate of sale.<sup>6</sup>

Meanwhile on March 25, 2013, petitioners filed before the RTC of Makati City, Branch (Br.) 145 a Complaint with Prayer for Issuance of Temporary Restraining Order (*TRO*) and/or Writ of Preliminary Injunction against BDO and the *Ex-Officio* Sheriff of the Makati City RTC, docketed as *Civil Case No. 13-330*.<sup>7</sup> On March 27, 2013, the said court issued an Order<sup>8</sup> denying petitioners' application for a TRO for insufficiency of evidence. In its Resolution<sup>9</sup> dated April 3, 2013, the trial

<sup>3</sup> Id. at 65 (RTC Decision in Civil Case No. 13-330); id. at 169-179 (Annexes to Comment filed by respondent BDO).

<sup>4</sup> Id. at 66-69.

<sup>5</sup> Id. at 165-168.

<sup>6</sup> Id. at 194-199.

<sup>7</sup> Id. at 38-44.

<sup>8</sup> Id. at 47-48; penned by Presiding Judge Carlito B. Calpatura.

<sup>9</sup> Id. at 49-52.

court likewise denied petitioners' application for the issuance of a writ of preliminary injunction. It found that petitioners failed to prove full payment of the loans, nor were they able to establish payment of at least 12% *per annum* interest on the principal obligation as required by A.M. No. 99-10-05-0.

Thereafter, petitioners filed an Amended Complaint<sup>10</sup> for annulment of mortgage and foreclosure sale, and violation of the truth in lending act.

In February 2014, BDO sent a Notice to Vacate to petitioners, citing the bank's legal right to obtain immediate physical possession of the foreclosed property during the period of redemption.<sup>11</sup> On June 5, 2014, BDO filed a Petition for Issuance of Writ of Possession before the RTC of Makati City, Br. 146 (LRC Case No. M-5927).

On August 18, 2014, RTC Makati City, Br. 145 rendered a Decision<sup>12</sup> in Civil Case No. 13-330 which declared as null and void the extrajudicial foreclosure, as well as the certificate of sale and related documents including the new title issued in favor of the purchaser. BDO was further ordered to reconvey the foreclosed property to the plaintiffs within 10 days after the latter shall have paid in full to BDO the amount of ₱659,188.38 with corresponding interest and penalty charge.

BDO filed a notice of appeal while petitioners filed a notice of partial appeal from the abovementioned decision. Both appeals were consolidated in the CA, docketed as CA-G.R. CV No. 104000.<sup>13</sup>

### ***The RTC Ruling***

On September 2, 2014, RTC Makati City, Br. 146 rendered its Decision granting the petition for issuance of a writ of possession in favor of BDO.<sup>14</sup> A Writ of Possession<sup>15</sup> was thereafter issued on September 18, 2014. Notices to Vacate were, thus, sent by the Sheriff to petitioners on September 29, 2014 and March 7, 2016.<sup>16</sup>

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<sup>10</sup> Id. at 53-59.

<sup>11</sup> Id. at 200.

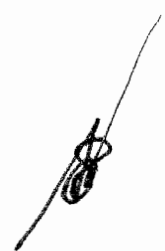
<sup>12</sup> Id. at 110-126; penned by Judge Carlito B. Calpatura.

<sup>13</sup> Id. at 17-18.

<sup>14</sup> Id. at 104-105; penned by Presiding Judge Encarnacion Jaja G. Moya.

<sup>15</sup> Id.

<sup>16</sup> Id. at 106-107.



Petitioners filed a petition, invoking Section 8 of Act No. 3135 praying that the implementation of the writ of possession be held in abeyance pending the finality of the August 18, 2014 Decision of RTC Makati City, Br. 145 which already declared the extrajudicial foreclosure and the subsequent sale of the subject property as null and void. In its Order<sup>17</sup> dated October 20, 2014, RTC Makati City, Br. 146 denied the petition, stating that the remedy sought by petitioners should be in the form of an appropriate motion and not a petition.

On November 4, 2014, petitioners filed a Motion to Cancel and/or Suspend the Enforcement of the Writ of Possession before the RTC Makati City, Br. 146, citing the same reasons in the petition they filed earlier.<sup>18</sup> This was denied in an Order<sup>19</sup> dated February 4, 2015. Petitioners' motion for reconsideration was likewise denied on May 11, 2015.<sup>20</sup>

Petitioners then filed a petition for *certiorari* under Rule 65 of the Rules of Court before the CA, alleging grave abuse of discretion in the trial court's denial of their motion to cancel and/or suspend the enforcement of writ of execution. They argued that while initially, BDO was receptive to a possible settlement of the case, it was adamant in demanding payment of ₱1,200,000.00, which amount is way above the ₱659,188.38 decreed by RTC Makati City, Br. 145.<sup>21</sup>

### *The CA Ruling*

In its assailed decision, the CA dismissed the petition, stating that petitioners availed of the wrong remedy. They failed to appeal the trial court's September 2, 2014 Decision. Instead, they filed a petition under Sec. 8 of Act No. 3135 and also failed to appeal the denial of said petition. Subsequently, petitioners filed a motion to cancel and/or suspend enforcement of the writ of possession, which was also denied. The September 2, 2014 Decision of the trial court had already become final and executory, and the petition for *certiorari* cannot be a substitute for a lost appeal.<sup>22</sup>

On the claim of grave abuse of discretion, the CA ruled that the trial court correctly denied the motion to cancel and/or suspend the writ of

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<sup>17</sup> Id. at 88-89.

<sup>18</sup> Id. at 27-30.

<sup>19</sup> Id. at 24-26.

<sup>20</sup> Id. at 33-34.

<sup>21</sup> Id. at 18-19.

<sup>22</sup> Id. at 21-22.

possession since it is in full accord with law and jurisprudence. The appellate court stressed that it is ministerial upon the court to issue a writ of possession in favor of a purchaser, provided that a proper motion is filed, a bond is approved and no third person is involved. As to the pendency of an action to annul the mortgage, this is not a ground for non-enforcement of the writ of possession. And while RTC Makati City, Br. 145 had already rendered its Decision in Civil Case No. 13-330 declaring the extrajudicial foreclosure null and void, the judgment in said case is not yet final and executory, as it is still on appeal before the CA. It is only upon the finality of the said judgment declaring the foreclosure void can the writ of possession be cancelled or revoked.<sup>23</sup>

Petitioners filed a motion for reconsideration, but it was denied by the CA.

## ISSUES

The petition set forth the following errors allegedly committed by the CA:

### I

THE [CA] ERRED IN HOLDING THAT THE JAYAG SPOUSES SHOULD HAVE ALLEGEDLY RESORTED TO APPEAL INSTEAD OF A PETITION FOR [*CERTIORARI*.]

### II

THE [CA] WAS IN ERROR IN HOLDING THAT A WRIT OF POSSESSION ALLEGEDLY REMAINS A MINISTERIAL DUTY OF THE LOWER COURT EVEN IF THERE IS A DECISION ANNULING THE FORECLOSURE SALE AND CERTIFICATE OF SALE[.]

### III.

THE [CA] ERRED IN NOT FINDING THAT THERE IS AN URGENT AND COMPELLING REASON TO ISSUE A [TRO] AND/OR WRIT OF PRELIMINARY INJUNCTION.<sup>24</sup>

On April 18, 2016, this Court issued a Resolution<sup>25</sup> ordering both parties to maintain the status quo ante pending the determination of this case, effective immediately and until further order of this Court.

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<sup>23</sup> Id. at 22-23.

<sup>24</sup> Id. at 7-8.

<sup>25</sup> Id. at 127-136.

### ***Petitioners' Arguments***

On the first assigned error, petitioners aver that they could not have validly appealed the decision of the trial court because at the time they learned about BDO's petition for issuance of a writ of possession, there was already a writ of possession issued and a notice to vacate from the sheriff. Pressed for time, upon having knowledge of the writ of possession, they, thus, filed a petition to set aside said writ, which was denied for being an improper remedy. Petitioners filed a motion to cancel and/or suspend the writ of possession, which the trial court also denied.<sup>26</sup>

On the second and third issues, petitioners maintain that their property rights are in great peril if no TRO or injunctive relief will be issued against BDO. Petitioners stand to lose their residential property and source of livelihood which they highly value, as distinguished from BDO's alleged right which is unsubstantial. They claim to have a clear and unmistakable right that needs to be protected by injunction on the basis of the preponderant finding of nullity of the foreclosure sale by RTC Makati City, Br. 145. This means that the presumption of validity of the foreclosure sale was already overturned even though the said judgment is not yet final. Moreover, the rule on issuance of writ of possession being a ministerial function of the court admits of exceptions. Petitioners contend that the declaration of nullity of the foreclosure sale by RTC Makati City, Br. 145 deserves to be respected until overturned by the proper appellate court.<sup>27</sup>

### ***Respondent BDO's Arguments***

BDO counters that since petitioners were able to file a petition for cancellation of writ of possession alleging the existence of the September 2, 2014 Decision, from which the writ of possession emanated, this implies that they in fact received a copy of said decision. Also, such is the nature of a petition for issuance of writ of possession under Secs. 7 and 8 of Act No. 3135, that is, *ex parte* and without impleading the other party. Nonetheless, it was held in *Metropolitan Bank and Trust Company v. Tan*<sup>28</sup> and *Bank of the Philippine Islands v. Spouses Tarampi*<sup>29</sup> that the remedy from the decision granting the petition for issuance of a writ of possession is appeal. Having lost their right to appeal, petitioners had erroneously resorted to *certiorari*. Moreover, they failed to show any capriciousness, whimsicality and arbitrariness on the part of the judge

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<sup>26</sup> Id. at 8.

<sup>27</sup> Id. at 8-11.

<sup>28</sup> 578 Phil. 464 (2008).

<sup>29</sup> 594 Phil. 198 (2008).

who issued the questioned orders granting the petition for a writ of possession. Contrary to petitioners' contention, the present case does not fall under the instances when the implementation of the writ of possession ceases to be ministerial.<sup>30</sup>

BDO prays for the lifting of the Status Quo Ante Order dated April 18, 2016 issued by this Court.

### The Court's Ruling

A writ of possession is a writ of execution employed to enforce a judgment to recover the possession of land. It commands the sheriff to enter the land and give its possession to the person entitled under the judgment.<sup>31</sup> It may be issued under the following instances: (1) in land registration proceedings under Sec. 17 of Act No. 496; (2) in a 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; (3) *in an extrajudicial foreclosure of a real estate mortgage under Sec. 7 of Act No. 3135, as amended*; and (4) *in execution sales under Sec. 33, Rule 39 of the Rules of Court*.<sup>32</sup> Sec. 7 of Act No. 3135, as amended, reads:

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

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<sup>30</sup> *Rollo*, pp. 146-158.

<sup>31</sup> *Spouses Reyes v. Spouses Chung*, 818 Phil. 225, 235 (2017).

<sup>32</sup> *Id.* at 235-236.

It is a time-honored legal precept that after the consolidation of titles in the buyer's name, for failure of the mortgagor to redeem, entitlement to a writ of possession becomes a matter of right. As the confirmed owner, the purchaser's right to possession becomes absolute. There is even no need for him to post a bond, and it is the ministerial duty of the courts to issue the same upon proper application and proof of title.<sup>33</sup> 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.<sup>34</sup> Questions on the regularity and the validity of the mortgage and foreclosure cannot be invoked as justification for opposing the issuance of a writ of possession in favor of the new owner.<sup>35</sup>

The rule that the issuance of a writ of possession in favor of a purchaser in the extrajudicial foreclosure sale becomes a ministerial function after the mortgagor has failed to redeem the property within the prescribed period, is not without exceptions. Jurisprudence established the following exceptions to the general rule:<sup>36</sup> 1) Gross inadequacy of purchase price;<sup>37</sup> 2) A third-party is claiming right adverse to debtor-mortgagor;<sup>38</sup> and 3) Failure to pay the surplus proceeds of the sale to mortgagor.<sup>39</sup> Petitioners' case does not fall under or even analogous to any of these instances. Their objections center on the alleged nullity of the foreclosure sale demanding payment of a huge loan balance which includes excessive, unconscionable and exorbitant interests.

In a number of cases, the Court has held that the remedy of a party from the trial court's order granting the issuance of a writ of possession is to file a petition to set aside the sale and cancel the writ of possession, and the aggrieved party may then appeal from the order denying or granting said petition.<sup>40</sup> However, when a writ of possession had already been issued, the proper remedy is an appeal and not a petition for *certiorari*. To be sure, the trial court's order granting the writ of

<sup>33</sup> *Syv. China Banking Corp.*, G.R. No. 213736, June 17, 2020.

<sup>34</sup> *Darcen v. V.R. Gonzales Credit Enterprises, Inc.*, 708 Phil. 197, 208 (2013), citing *BPI Family Savings Bank, Inc. v. Golden Power Diesel Sales Center, Inc.*, 654 Phil. 382, 394 (2011).

<sup>35</sup> *Spouses Tolosa v. United Coconut Planters Bank*, 708 Phil. 134, 144 (2013).

<sup>36</sup> *Nagtalon v. United Coconut Planters Bank*, 715 Phil. 595, 606 (2013), citing *Spouses Tolosa v. United Coconut Planters Bank*, supra.

<sup>37</sup> *Cometa v. Intermediate Appellate Court*, 235 Phil. 569 (1987).

<sup>38</sup> *Barican v. Intermediate Appellate Court*, 245 Phil. 316, 321 (1988).

<sup>39</sup> *Sulit v. Court of Appeals*, 335 Phil. 914 (1997).

<sup>40</sup> *Producers Bank of the Philippines v. Excelsa Industries, Inc.*, 685 Phil. 694, 702-703 (2012), citing *Parents-Teachers Association (PTA) of St. Matthew Christian Academy v. Metropolitan Bank and Trust Co.*, 627 Phil. 669, 687 (2010); *Mallari v. Banco Filipino Savings and Mortgage Bank*, 585 Phil. 657, 663 (2008).



possession is final. The soundness of the order granting the writ of possession is a matter of judgment, with respect to which the remedy of the party aggrieved is ordinary appeal.<sup>41</sup>

Petitioners do not dispute that they failed to redeem their property within the one-year period reckoned from the date of the registration of the sale. As noted by the CA, their right of redemption expired on July 5, 2014. The trial court therefore committed no error or grave abuse in granting the petition for issuance of a writ of possession and denying petitioners' plea for its cancellation and/or the suspension of its implementation.

In an extrajudicial foreclosure of real property, the purchaser becomes the absolute owner thereof if no redemption is made within one year from the registration of the certificate of sale by those entitled to redeem. Being already an absolute owner, he may demand possession as a matter of right. Hence, Sec. 7 of Act No. 3135 imposes upon the trial court a ministerial duty to issue a writ of possession to such new owner upon the filing of an *ex parte* motion. The trial court has no discretion on this matter. Thus, any assertion of *discretion* in the issuance of the writ of possession is misplaced, and a petition for *certiorari* is not a proper remedy. The Order granting the writ of possession being a final order, it is the proper subject of appeal,<sup>42</sup> in accordance with our ruling in *Metropolitan Bank and Trust Company v. Tan*<sup>43</sup> and *Government Service Insurance System v. Court of Appeals*.<sup>44</sup>

Petitioners assert that, upon having knowledge of the issuance of the writ of possession, they filed a petition to cancel the said writ pursuant to Sec. 8 of Act No. 3135. With the trial court's denial of the said petition, they filed a motion to cancel and/or suspend the enforcement of the writ of possession, prompted by the trial court's pronouncement that they should have filed instead the proper motion. With the denial of said motion, petitioners elevated the matter to the CA via a *certiorari* petition.

Given the circumstances, the Court disagrees with the CA's dismissal of the petition for *certiorari* upon the reasoning that the correct remedy is appeal. Neither can We find legal basis for petitioners' position that *certiorari* is the proper remedy because what they are seeking to be reviewed is no longer the trial court's decision denying their petition and motion, but the writ of possession itself and the

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<sup>41</sup> Id. at 703.

<sup>42</sup> *Bank of the Philippine Islands v. Spouses Co*, 772 Phil. 291, 306 (2015), citing *Mallari v. Banco Filipino Savings and Mortgage Bank*, 585 Phil. 657, 663 (2008).

<sup>43</sup> *Supra* note 28.

<sup>44</sup> 251 Phil. 222 (1989).

notice to vacate which were issued despite the decision rendered by RTC Makati City, Br. 145 annulling and declaring void the foreclosure sale and certificate of sale. They likened a writ of possession to a writ of execution such that the proper remedy is *certiorari*.

The CA and petitioners are both mistaken as to the proper remedy from the trial court's order granting a writ of possession. While it is true that appeal is the remedy available to petitioners since a writ of possession had already been issued, they overlooked the fact that they sought legal remedies when the period of redemption had already lapsed, and Sec. 8 of Act No. 3135 is no longer applicable. Thus, We explained in *Bank of the Philippine Islands v. Spouses Co.*<sup>45</sup>

We clarify, however, that this remedy of appeal is different from the remedy provided in Section 8 of Act No. 3135, as amended by Act No. 4118. An error of judgment committed by a court in the exercise of its legitimate jurisdiction is not the same as grave abuse of discretion. Errors of judgment are correctible by appeal while those of jurisdiction are reviewable by *certiorari*. In *680 Home Appliances, Inc. v. Court of Appeals*, we explained that **Act No. 3135 finds no application after the lapse of the redemption period, and the remedy of a debtor to contest the possession of the property is a separate action, and not the appeal provided for in Section 8 of the Act.** We explained:

In a number of cases, the Court declared that Section 8 of Act No. 3135 is the available remedy to set aside a writ of possession, without considering whether the writ involved in each of these cases was issued during or after the lapse of the redemption period. Upon reevaluation, we find it necessary to make a distinction and clarify when the remedy under Section 8 of Act No. 3135 may be availed of.

x x x x

Act No. 3135 governs only the manner of the sale and redemption of the mortgaged real property in an extrajudicial foreclosure; proceedings beyond these, *i.e.*, upon the lapse of the redemption period and the consolidation of the purchaser's title, are no longer within its scope x x x.

As pointed out, **the remedy provided under Section 8 of Act No. 3135 to the debtor becomes available only after the purchaser acquires actual possession of the property.** This is required because

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<sup>45</sup> Supra note 42, at 306-308.



until then the debtor, as the owner of the property, does not lose his right to possess.

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

Even prior to BDO's filing of a petition for issuance of a writ of possession, petitioners already instituted a civil case to enjoin the impending foreclosure sale, with the complaint subsequently being amended to one for annulment of mortgage and foreclosure after failing to obtain injunctive relief from RTC Makati City, Br. 145. Petitioners cannot invoke the same grounds for nullifying the extrajudicial foreclosure and certificate of sale to oppose the issuance of the writ of possession since the August 18, 2014 Decision of the RTC Makati City, Br. 145 is not yet final.

In *Cabuhat v. Development Bank of the Philippines*,<sup>46</sup> the Court expounded on the remedy provided in Sec. 8<sup>47</sup> of Act No. 3135, thus:

A petition under Section 8 of Act No. 3135 is *filed in the same proceedings where possession is requested*. This is a summary proceeding under Section 7 because the issuance of a writ of possession is a *ministerial function* of the RTC. This possessory proceeding is *not* a judgment on the merits, but simply *an incident in the transfer of title*. Consequently, the judgment cannot produce the effect of *res judicata*.

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<sup>46</sup> 788 Phil. 596 (2016).

<sup>47</sup> Section 8. The debtor may, in the proceedings in which possession was requested, but not later than thirty days after the purchaser was given possession, petition that the sale be set aside and the writ of possession cancelled, specifying the damages suffered by him, because the mortgage was not violated or the sale was not made in accordance with the provisions hereof, and the court shall take cognizance of this petition in accordance with the summary procedure x x x.

A Section 8 proceeding is narrowly designed only to **set aside the sale and/or the order granting possession** under Section 7. It cannot annul the validity of the foreclosure or of the mortgage. Due to its very limited scope, it cannot entertain issues beyond the procedural irregularities in the sale.

**The remedy of a litigant who challenges the existence of the mortgage or the validity—not the regularity—of the foreclosure is a separate action to annul them.** These grounds outside Section 8 have to be threshed out in a full-blown trial.<sup>48</sup> (additional emphasis supplied)

Petitioners' resort to *certiorari* to the CA, after the expiration of the redemption period, initially may be viewed as not proscribed, given the unavailability of appeal under Sec. 8 of Act No. 3135. Unfortunately, petitioners utterly failed to show grave abuse in the trial court's issuance of the writ of possession. The only basis for their claim of grave abuse is the trial court's issuance of the Writ of Possession on September 18, 2014 despite the rendition of the August 18, 2014 Decision of the RTC Makati City, Br. 145 which declared the extrajudicial foreclosure and sale null and void. At the time their petition was resolved by the CA, the said decision was still on appeal. More importantly, having already instituted Civil Case No. 13-330 (annulment of mortgage and foreclosure), it cannot be said that petitioners have no other plain and adequate remedy. Consequently, the CA was still correct in dismissing the petition for being an improper remedy.

We stress that our resolution of this case is without prejudice to the final outcome of Civil Case No. 13-330 and the actions to be taken by the parties towards final settlement of petitioners' loan account with BDO.

As per Manifestation<sup>49</sup> dated October 25, 2016 filed by petitioners before this Court, the CA's Fifth Division had rendered its Decision<sup>50</sup> dated September 29, 2016 in CA-G.R. CV No. 104000 affirming with modification (increasing the amount of petitioners' outstanding loan obligation as computed by the RTC: from ₱659,188.38 to ₱1,008,031.49 plus interest and penalty charge) the August 18, 2014 Decision of the RTC Makati City, Br. 145 in Civil Case No. 13-330. Petitioners emphasize the fact that the CA sustained the RTC's nullification of the extrajudicial foreclosure and sale. We quote the pertinent portion of the CA decision:

<sup>48</sup> *Cabuhat v. Development Bank of the Philippines*, supra note 46, at 606.

<sup>49</sup> *Rollo*, pp. 364-365.

<sup>50</sup> *Id.* at 367-391; penned by Associate Justice Jose C. Reyes, Jr. with Associate Justices Stephen C. Cruz and Ramon Paul L. Hernando (now a Member of the Court), concurring.

From the records, it is evident that appellant spouses made several payments but were unable to stop the foreclosure proceedings as they failed to raise the loan balance of Php4,699,956.67 stated in the Notice of Sheriff's Sale, an amount grossly inflated by the excessive interest imposed and computed on the basis of incorrect principal sum. Thus, it is only proper that they be given the opportunity to repay the real amount of their indebtedness.

On this basis, we nullify the foreclosure proceedings over the subject property since the amount demanded as the outstanding loan was overstated. Consequently, it has not been shown that the appellant spouses have failed to pay the correct amount of their outstanding obligation. Accordingly, any registration of the foreclosure sale is invalid and cannot vest title over the mortgaged property.<sup>51</sup> (citation omitted)

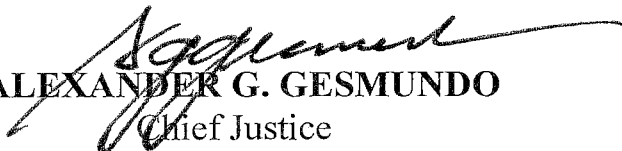
Records of this Court further reveal that petitioners filed in this Court a petition for review under Rule 45 of the Rules of Court (G.R. No. 230289, entitled "*Spouses Jose P. Jayag and Marilyn P. Jayag v. BDO Unibank, Inc. [as assignee of Rural Bank of San Juan, Inc.], Hon. Engracio M. Escasinas, Jr., in his official capacity as Ex-Officio Sheriff and/or the Assigned Sheriff,*" seeking to modify the above-quoted ruling of the CA by reducing petitioners' outstanding obligation to ₱458,464.45.

On April 26, 2017, this Court issued a Minute Resolution denying the petition in G.R. No. 230289 for failure to sufficiently show that the appellate court committed any reversible error in the challenged decision and resolution.<sup>52</sup> Petitioners filed a motion for reconsideration, but it was denied with finality under Resolution dated December 13, 2017.<sup>53</sup> As per entry of judgment, the April 26, 2017 Minute Resolution had become final and executory on December 13, 2017.<sup>54</sup>

In view of this development, there exists no legal impediment for petitioners to file an appropriate motion before the trial court for the cancellation of the Writ of Possession issued on September 18, 2014.

**WHEREFORE**, the petition is **DENIED**.

**SO ORDERED**.

  
ALEXANDER G. GESMUNDO  
Chief Justice

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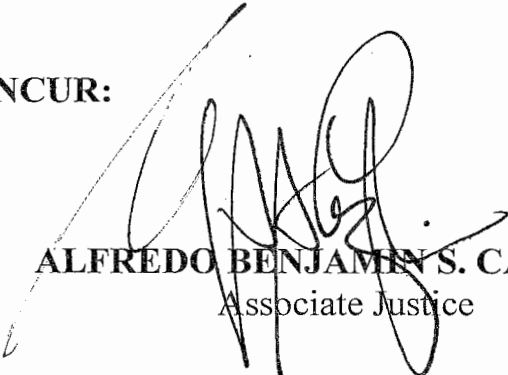
<sup>51</sup> Id. at 389.

<sup>52</sup> *Rollo* (G.R. No. 230289), p. 76.


<sup>53</sup> Id. at 79-95.

<sup>54</sup> Id. at 96.

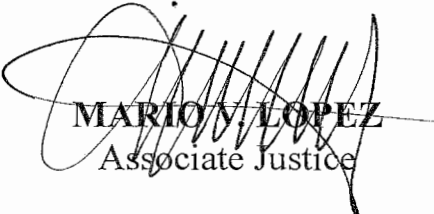
**WE CONCUR:**




**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice



**AMY C. LAZARO-JAVIER**  
Associate Justice



**MARIONA LOPEZ**  
Associate Justice



**JHOSEP LOPEZ**  
Associate Justice

**CERTIFICATION**

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



**ALEXANDER G. GESMUNDO**  
Chief Justice