



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

IN RE: EX PARTE PETITION
FOR ISSUANCE OF WRIT
OF POSSESSION

G.R. No. 213673

Present:

PHILIPPINE NATIONAL
BANK,
Petitioner,

PERLAS-BERNABE, S.A.J.,
Chairperson,
HERNANDO,
ZALAMEDA,
ROSARIO, and
MARQUEZ, JJ.

- versus -

ALMA T. PLACENCIA
FONTANOZA,
Respondent.

Promulgated:

MAR 02 2022

X ----- X

DECISION

HERNANDO, J.:

This petition for review on *certiorari*¹ assails the January 23, 2014 Decision² and July 28, 2014 Resolution³ of the Court of Appeals (CA) in CA-G.R. CV No. 02836, which set aside the February 21, 2012 Order⁴ of the Regional Trial Court (RTC), Branch 23, of Molave, Zamboanga del Sur in Special Case No. 2011-50-090.

¹ *Rollo*, pp. 18-30.

² *Id.* at 8-12. Penned by Associate Justice Edgardo T. Lloren and concurred in by Associate Justices Marie Christine Azcarraga-Jacob and Edward B. Contreras.

³ *Id.* at 13-14. Penned by Associate Justice Edgardo T. Lloren and concurred in by Associate Justices Edgardo A. Camello and Edward B. Contreras.

⁴ Records, pp. 73-74. Penned by Presiding Judge Jaime B. Caberte.

The Facts:

Spouses Salvador and Alma (Alma) Fontanoza obtained a loan from the Ozamiz Branch of the Philippine National Bank (PNB). To secure the loan, they mortgaged a parcel of land located at Barangay Dao, Mahayag, Zamboanga del Sur covered by Original Certificate of Title No. P-29979.⁵ Since the Fontanozas failed to pay, PNB foreclosed the property. On January 8, 2002, as the sole bidder in the public auction, PNB acquired the lot for ₱236,000.00.⁶ PNB registered the sale on January 28, 2002. However, the Fontanozas failed to redeem the property.⁷

More than nine years later, specifically on July 18, 2011, PNB filed an *ex-parte* petition for issuance of writ of possession⁸ before the RTC, which was docketed as SP Case No. 2011-50-090.

Ruling of the Regional Trial Court:

In a Resolution⁹ dated August 17, 2011, the RTC granted PNB's petition for the issuance of a writ of possession. The August 17, 2011 Resolution became final and executory on September 15, 2011 based on a certificate of finality¹⁰ dated November 21, 2011.

More than two months after the RTC's August 17, 2011 Resolution became final and executory, or on November 25, 2011, Alma filed an opposition with urgent motion to recall writ of possession.¹¹ She averred that she also instituted a suit against PNB before the trial court which was docketed as Civil Case No. 2011-20-458. Likewise, she had a contract with PNB for the repurchase of the property, and that she had already paid the agreed down payment, which she claimed as earnest money. In addition, she was not notified of PNB's petition for the issuance of a writ of possession.¹²

In an Order¹³ dated December 19, 2011, the RTC directed PNB to: 1) comment on Alma's opposition and attach proof, if any, to clarify the true nature of its agreement with Alma, given that it allowed her to tender ₱28,500.00 on January 17, 2003; and 2) explain the purpose of Alma's deposit in the amount of ₱46,500.00 covered by Official Receipt No. 681449. Similarly, the RTC

⁵ Id. at 7-8.

⁶ Id. at 9.

⁷ *Rollo*, p. 8.

⁸ Records, pp. 1-6.

⁹ Id. at 12-15.

¹⁰ *Rollo*, p. 66; records, p. 16.

¹¹ Records, pp. 17-20.

¹² Id. at 19.

¹³ Id. at 28-32.

directed Alma to submit evidence to support her allegation that the mode of payment for the repurchase of the property was stated at the back of PNB's letter to her.

In its reply (to Alma's opposition),¹⁴ PNB denied the perfection of the contract of repurchase. It argued that Alma's deposits were mere unaccepted offers. Additionally, it returned Alma's deposits as indicated in a document with the heading "Accounts/Payable (A/P)."¹⁵ Since her offer was not approved, PNB returned Alma's down payment through a Manager's Check¹⁶ dated February 2, 2006 which she encashed on February 12, 2007.¹⁷ Furthermore, the title to the subject property need not be consolidated in its name as it is the trial court's ministerial duty to issue the writ of possession in its favor as the purchaser during the foreclosure sale. Besides, Alma failed to redeem the property within the one-year redemption period. There is no need to give Alma any notice of its petition for the issuance of a writ of possession given that it was an *ex parte* proceeding. Apart from this, the pendency of a separate case for annulment of mortgage and/or foreclosure sale does not bar the grant of a writ of possession to it.

In her rejoinder,¹⁸ Alma contended that she remains in possession of the property not as a mortgagor but as a purchaser. She presented receipts and deposit slips¹⁹ to show that she had fully paid the repurchase price as of January 21, 2008. In addition, she submitted a copy of a Notice of Lis Pendens²⁰ (which was presented in Civil Case No. 2011-20-458, the case which Alma filed for the declaration of the extra-judicial foreclosure and sale as null and void or for repurchase [of the property]).

The RTC, in its February 21, 2012 Order,²¹ noted that Alma already instituted Civil Case No. 2011-20-458. It ruled that any question regarding the validity of the mortgage or its foreclosure cannot be used as a legal ground to refuse the issuance of a writ of possession. Even if there is a pending suit for annulment of the mortgage or foreclosure, the purchaser is entitled to a writ of possession without prejudice to the outcome of the annulment case. In other words, allowing an opposition based on any ground in order to hold in abeyance the issuance of a writ of possession is tantamount to an injunction prohibiting the said issuance. Thus, what cannot be done directly cannot be done indirectly. The dispositive portion of the RTC's February 21, 2012 Order reads:

¹⁴ Id. at 33-39.

¹⁵ Id. at 40.

¹⁶ Id. at 42-43.

¹⁷ Id. at 35-36.

¹⁸ Id. at 59-63.

¹⁹ Records, pp. 22, 66-67; P46,500.00 on September 7, 2004; P75,000.00 on February 12, 2007; P130,000.00 on January 21, 2008.

²⁰ Records, p. 68.

²¹ Id. at 73-74.

WHEREFORE, premises considered, the OPPOSITION filed by Alma T. Placencia Fontanoza to the Resolution of the Court dated August 17, 2011 is hereby **DENIED** for lack of merit.

ALMA T. PLACENCIA FONTANOZA, her heirs and/or agents, and all persons claiming [any right] are hereby **ORDERED TO VACATE** the premises of the subject parcel of land and from its improvements constructed therein which are specifically covered by Certificate of Title No. P-29,979 immediately upon notice. Thereafter, **PLACING** and **GIVING** the possession of the said subject parcel of land and its existing improvements to herein Petitioner Philippine National Bank.

SO ORDERED.²²

Aggrieved, Alma appealed²³ to the CA.

Ruling of the Court of Appeals:

The CA, in its assailed January 23, 2014 Decision,²⁴ stated that in case the mortgagor fails to redeem the property, the issuance of a writ of possession in favor of the purchaser in an extrajudicial foreclosure sale becomes a matter of right. The writ should be issued upon the filing of a proper motion and the approval of the corresponding bond. Thus, the trial court cannot allow an injunction to prohibit the issuance of the writ despite a pending action for the annulment of the mortgage or the foreclosure itself.²⁵

However, the CA noted that in the case of *Barican v. Intermediate Appellate Court*²⁶ (*Barican*) the Supreme Court deemed it inequitable to issue a writ of possession in favor of the purchaser in the auction sale. In *Barican*, the mortgagee bank waited five years from the time of the foreclosure before filing a petition for the issuance of a writ of possession. Besides, the property involved was already in the possession of a third person pursuant to a deed of sale with assumption of mortgage, which was executed even before the purchaser could register the sheriff's certificate of sale.²⁷

In the case at bench, Alma argued that there is an existing contract for the repurchase of the property and that she filed a case (Civil Case No. 2011-20-458) against PNB for the enforcement of the said contract, attaching receipts and deposit slips to prove her payments. She claimed that she remained in

²² Id. at 74.

²³ Id. at 76, 82.

²⁴ *Rollo*, pp. 8-12.

²⁵ Id. at 10.

²⁶ 245 Phil. 316 (1988).

²⁷ *Rollo*, p. 11.

possession of the property not as a mortgagor but as a purchaser. Moreover, PNB applied for a writ of possession only on July 18, 2011 even if it already acquired the property in the foreclosure sale on January 8, 2002.²⁸

The CA held that the instant case is similar to *Barican*. Aside from PNB's delay in applying for a writ, Alma remained in possession of the property. Although she is not a third person to the mortgage, Alma is claiming the property as a purchaser and no longer as a mortgagor. Hence, the issuance of the writ of possession in favor of PNB is unjust, as the issue of repurchase has not yet been settled.²⁹

The dispositive portion of the CA's assailed Decision states:

WHEREFORE, the appeal is GRANTED. The Order dated February 21, 2012 of the Regional Trial Court, 9th Judicial Region, Branch 23, Molave, Zamboanga del Sur, in Special Case No. 2011-50-090 is SET ASIDE.

SO ORDERED.³⁰

PNB asked for a reconsideration³¹ which the CA denied in a Resolution³² dated July 28, 2014.

Hence, PNB filed a petition for review on *certiorari*³³ before this Court and raised the following –

Issues

WHETHER OR NOT THE *BARICAN* CASE RELIED UPON BY THE COURT OF APPEALS IN SETTING ASIDE THE TRIAL COURT'S ORDER DENYING RESPONDENT'S MOTION TO RECALL [THE ALREADY FINAL AND EXECUTORY] WRIT OF POSSESSION IS APPLICABLE TO THIS INSTANT CASE.

WHETHER OR NOT THE ALLEGED DELAY IN THE APPLICATION FOR WRIT OF POSSESSION AND/OR THE MORTGAGOR'S CONTINUED POSSESSION OF THE PROPERTY SUBJECT OF THE WRIT JUSTIFIES THE SETTING ASIDE OF AN ORDER DENYING A MOTION TO RECALL SAID WRIT.

WHETHER OR NOT A WRIT OF POSSESSION ISSUED UNDER A RESOLUTION THAT HAS ALREADY BECOME FINAL AND EXECUTORY CAN STILL BE DISTURBED BY THE FILING OF A MOTION TO RECALL (OR BY A SUBSEQUENT COURT OF APPEALS DECISION ORDERING

²⁸ Id.

²⁹ Id.

³⁰ Id.

³¹ Id. at 37-42.

³² Id. at 13-14.

³³ Id. at 18-30.

THE TRIAL COURT'S DENIAL OF THE SAID MOTION TO RECALL TO BE SET ASIDE ON THE GROUND THAT THE PREVIOUS ISSUANCE OF THE WRIT WAS UNJUST).³⁴

PNB insists that the issuance of the writ of possession in its favor became final and executory even before Alma filed her motion to recall the said writ.³⁵ The issuance of a writ of possession is ministerial on the part of the trial court and the CA's reliance on *Barican* is misplaced.³⁶ Alma is not a third party to the mortgage and that it never accepted her payments. The allegations of payment, as well as the validity of the receipts, were never proven before the RTC, apart from the fact that PNB denied such payments. Thus, Alma has never proven any equitable right to possess the property.³⁷

PNB avers that *BPI Family Savings Bank, Inc. v. Golden Power Diesel Sales Center, Inc.*³⁸ should apply. According to Section 33, Rule 39 of the Rules of Court, the possession of the property should be given to the purchaser or last redemptioner unless a third party is holding the property adversely to the judgment obligor. This contemplates a situation wherein a co-owner, a tenant or usufructuary (a third party), holds the property by adverse title or right. If so, the issuance of a writ of possession ceases to be ministerial and may no longer be conducted *ex parte*. Moreover, a pending action for annulment of mortgage or foreclosure sale does not stay the issuance of the writ of possession since the purchaser is entitled to the writ. This is without prejudice to the outcome of the pending annulment case.³⁹

Regarding its delay in filing a petition for a writ of possession, PNB argues that a buyer in a foreclosure sale becomes the absolute owner of the property purchased if it is not redeemed during the period of one year after registration of the sale. Hence, the purchaser is entitled to the possession of the property and can demand it at any time following the consolidation of ownership in his/her name and the issuance to him/her of a new transfer certificate of title.⁴⁰

PNB maintains that although the issue was not raised before the RTC, the issuance of the writ of possession in its favor has attained finality. Ergo, the trial court had already lost jurisdiction over the case and its acceptance of Alma's motion to recall was null and void. Consequently, the CA should not have entertained Alma's appeal.⁴¹

³⁴ Id. at 23.

³⁵ Id.

³⁶ Id. at 24-25.

³⁷ Id. at 26.

³⁸ 654 Phil. 382 (2011).

³⁹ *Rollo*, pp. 26-27.

⁴⁰ Id. at 27-28.

⁴¹ Id. at 28.

Alma counters that the issuance of the writ of possession in PNB's favor did not attain finality and is void *ab initio* as it violated her right to due process. She avers that she was not notified of the filing and hearing of PNB's petition. She maintains that she is in actual and adverse possession of the property as an owner by way of repurchase and no longer as a mortgagor. Even assuming that the order issuing the writ of possession has become final and executory, it cannot be enforced considering the doctrine of laches and prescription.⁴²

Alma points out that she received a letter⁴³ dated August 11, 2004 from PNB, asking her if she was still interested to purchase the property. According to the letter, Alma made an offer on January 17, 2003 to repurchase the property and gave an initial payment of ₱28,500.00. However, Alma failed to submit the documents needed to process the recommendation of her offer. Additionally, PNB stated in the letter that it reserves the right to forfeit/return cash deposits on purchase offers for acquired assets. PNB then gave Alma 30 days from receipt of the letter to finalize her transaction; otherwise, the bank will offer the property to another interested buyer and refund her down payment.

Thereafter, on September 7, 2004, Alma sought the Branch Manager of the Ozamiz Branch of PNB, Mr. Eduardo Catapang (Catapang), and paid ₱46,500.00⁴⁴ as down payment, raising her total deposits to ₱75,000.00. Subsequently, Catapang supposedly wrote at the back of the letter the following details:⁴⁵

OFFER - ₱250,000.00 –
Down - ₱75,000.00 – (28,500 -) ₱46,500 –
Balance - ₱175,000
Payable 3 or 5 years⁴⁶

Furthermore, Alma argues that PNB admitted its receipt of the ₱28,500.00 initial payment for the repurchase of the property. Afterwards, Alma supposedly made additional payments within “3 to 5 years,” as follows: 1) ₱75,000.00 on January 12, 2007; and 2) ₱130,000.00 on January 21, 2008, both through a certain Johny Rosca of PNB, Ozamiz City upon the instructions of Catapang (as evidenced by PNB Deposit Slips).⁴⁷

PNB insists that Alma's claim of violation of due process is baseless as the trial court's duty to issue the writ of possession is ministerial and raised in an *ex parte* proceeding.⁴⁸

⁴² Id. at 92-93.

⁴³ Records, p. 21.

⁴⁴ Id. at 22.

⁴⁵ *Rollo*, p. 94.

⁴⁶ Id.

⁴⁷ Id. at 95; records, pp. 66-67.

⁴⁸ *Rollo*, pp. 131-132.

Thus, the main issue is whether or not PNB is entitled to the issuance of a writ of possession.

Our Ruling

The petition has merit.

Generally, “once title to the property has been consolidated in the buyer’s name upon failure of the mortgagor to redeem the property within the one-year redemption period, the writ of possession becomes a matter of right belonging to the buyer. Consequently, the buyer can demand possession of the property at any time. Its right of possession has then ripened into the right of a confirmed absolute owner and the issuance of the writ becomes a ministerial function that does not admit of the exercise of the court’s discretion. The court, acting on an application for its issuance, should issue the writ as a matter of course and without any delay.”⁴⁹

In this case, the records showed no proof that PNB has formally consolidated the title of the property in its name. Additionally, it took the bank more than nine years before it petitioned for the issuance of a writ of possession. Nevertheless, the bank registered itself as the purchaser following the foreclosure sale, through a Certificate of Sale recorded in the Registry of Deeds on January 28, 2002.⁵⁰ Moreover, Alma failed to redeem the property during the one-year redemption period. Thus, she ceased to have rights over the subject lot either as a mortgagor or redemptioner. These circumstances suggest that PNB, although it did not consolidate the title in its name yet, is entitled to possess the property as the registered purchaser after the foreclosure sale, and because of Alma’s failure to redeem it even if she is in actual possession of the lot.

However, there are exceptions to the rule that the trial court’s duty to issue the writ of possession in favor of the purchaser is ministerial.⁵¹ “In *Nagtalon v. United Coconut Planters Bank*, the Court enumerated the following jurisprudential exceptions: (a) gross inadequacy of the purchase price;⁵² (b) third party claiming right adverse to the mortgagor/debtor,⁵³ and; (c) failure to pay the surplus proceeds of the sale to the mortgagor.”⁵⁴ The first and third exceptions cannot apply to this case since there are no allegations referring to either the purchase price or surplus proceeds of the sale, if any.

⁴⁹ *Spouses Cabasal v. BPI Family Savings Bank, Inc.*, G.R. No. 233846, November 18, 2020, citing *Nagtalon v. United Coconut Planters Bank*, 715 Phil. 595, 602 (2013).

⁵⁰ Records, p. 2.

⁵¹ See *Chavez v. Maybank Philippines, Inc.*, G.R. No. 242852, July 29, 2019, citing *Nagtalon v. United Coconut Planters Bank*, *supra*.

⁵² *Id.*, citing *Cometa v. Intermediate Appellate Court*, 235 Phil. 569, 574 (1987).

⁵³ *Id.*, citing *Barican v. Intermediate Appellate Court*, 245 Phil. 316, 320-321 (1988).

⁵⁴ *Id.*, citing *Sulit v. Court of Appeals*, 335 Phil. 914, 926 (1997).

To expound on the second exception, *Spouses Rosario v. Government Service Insurance System*⁵⁵ states:

As an exception, the ministerial duty of the court to issue an *ex-parte* writ of possession ceases when there are third-parties who are actually holding the mortgaged property adversely to the judgment debtor. Sec. 33 of Rule 39, made applicable to extrajudicial foreclosure of real estate mortgages by Sec. 6, Act No. 3135, provides:

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;

Upon the expiration of the right of redemption, the purchaser or redemptioner shall be substituted to and acquire all the rights, title, interest and claim of the judgment obligor to the property as of the time of the levy. The possession of the property shall be given to the purchaser or last redemptioner by the same officer **unless a third party is actually holding the property adversely to the judgment obligor.** (Emphasis supplied).

Jurisprudence teaches that when there are third-party possessors of the property, the RTC should instead conduct a hearing to determine the nature of the adverse possession. However, for this exception to apply, it is not enough that the property is in the possession of a third party, it must also be held by the third party adversely to the judgment debtor or mortgagor.⁵⁶

To emphasize, a **third party** should hold possession of the subject property adversely to the judgment debtor or mortgagor. Here, Alma cannot be considered as a third party since **she herself was the mortgagor who failed to redeem the property during the foreclosure proceeding and the redemption period.** In other words, she had full knowledge that PNB was the purchaser at the foreclosure sale and that she did not redeem the property during the one-year period for redemption. Alma can hardly be considered as a third party holding the property adversely to the judgment debtor or mortgagor precisely because she herself was the mortgagor. At least with respect to the *foreclosure itself*, she already surrendered any right (as a mortgagor or redemptioner) she had over the property after she failed to redeem it.

In view of this finding, We find that the CA's reliance on the *Barican* case was indeed misplaced. To expound,

In *Barican v. Intermediate Appellate Court*,⁵⁷ this Court denied DBP's application for writ of possession, and upheld the right of Spouses Barican, the possessors of the property. This Court reasoned that DBP had knowledge of the

⁵⁵ *Spouses Rosario v. Government Service Insurance System*, G.R. No. 200991, March 18, 2021.

⁵⁶ *Id.*

⁵⁷ *Id.*, citing *Barican v. Intermediate Appellate Court*, *supra* note 53.

sale with assumption of mortgage between the judgment debtor and Spouses Barican, and even received payments from them updating the loan. In addition, the Court found that the judgment debtor was never in possession of the property, and that there was a pending civil case between the DBP and Spouses Barican concerning ownership to the foreclosed property. The Court ruled that under the circumstances, the issuance of a writ of possession is no longer ministerial on the part of the trial court.⁵⁸

To stress, although Alma is supposedly in possession of the property, she cannot be considered as a third party who held the property adversely to the judgment debtor or mortgagor simply because she herself was the mortgagor who failed to redeem the lot. This is notwithstanding PNB's delay, for reasons only known to it, in filing a petition for the issuance of a writ of possession.

Alma posits that since she filed a case "for the declaration of the extra-judicial foreclosure and sale as null and void or for repurchase,"⁵⁹ the RTC erroneously issued the writ of possession in PNB's favor. Yet, jurisprudence teaches that "[n]ot even any question regarding the validity of the mortgage or its foreclosure is a legal ground for refusing the issuance of a writ of execution/writ of possession."⁶⁰ Hence, she cannot insist on the recall of the writ of possession solely because she filed a separate case which questioned the foreclosure and advanced her claim of repurchase.

To reiterate, "[t]he duty of the court to issue a writ of possession is ministerial and may not be stayed by a pending action for annulment of the mortgage or the foreclosure itself.⁶¹ The only exception is when a third party is actually holding the property by adverse title or right.⁶² To be considered in adverse possession, the third party possessor must have done so in his own right and not as a mere successor or transferee of the debtor or mortgagor."⁶³

Notwithstanding Alma's claim that PNB accepted her offer to "repurchase" the property, the fact remains that this allegation cannot be addressed in an *ex parte* proceeding involving the issuance of a writ of possession. It is not proper to hold in abeyance the issuance of the writ absent an injunctive order. Besides, Alma's argument can better be addressed in the separate civil case which she filed before the trial court. If indeed she should be considered as the true owner of the property, she can fully assert her rights in a separate full-blown trial and not merely through her opposition to the issuance of the writ. This is because her perceived right no longer stems from her position as a mortgagor but as an alleged "repurchaser" of the subject property. She could

⁵⁸ Id.

⁵⁹ Amended to include "Specific Performance," CA rollo, p. 24.

⁶⁰ *Spouses Cabasal v. BPI Family Savings Bank, Inc.*, supra note 49, citing *Nagtalon v. United Coconut Planters Bank*, 715 Phil. 595, 603-604 (2013) which cited *Espinoza v. United Overseas Bank Phils.*, 630 Phil. 342, 348 (2010).

⁶¹ *HH & Co. Agricultural Corp. v. Perlas*, G.R. No. 217095, February 12, 2020, citing *LZK Holdings & Dev't Corp. v. Planters Dev't. Bank*, 725 Phil. 83, 88 (2014).

⁶² Id., citing *Sps. Marquez v. Sps. Alindog*, 725 Phil. 237, 246-247 (2014).

⁶³ Id., citing *Sps. Gallent v. Velasquez*, 784 Phil. 44, 63 (2016).

not assert her claim merely by opposing the issuance of the writ of possession and by suddenly insisting that she had a contract to repurchase the property since the foreclosure proceeding did not even contemplate the “repurchase” contract.

In the same vein, Alma admitted⁶⁴ that she retrieved her deposits from PNB, which the bank also indicated in its reply⁶⁵ to Alma’s opposition by submitting the Manager’s Check which she encashed.⁶⁶ Regardless, Alma contended that Catapang refused to deliver to her any document showing full payment of the lot and to return the certificate of title to her. Nonetheless, it is likely that PNB did not accept her offer to repurchase the lot. Alma did not present any documentary evidence that the bank accepted or approved her offer. Mere handwritten notes at the back of PNB’s letter to her cannot conclusively be presumed as the perfection of the “repurchase” contract. Since she transacted with a bank, she should have insisted that the terms of the “repurchase” contract be reduced in writing with the corresponding approval from the appropriate authority. As she previously procured a loan from PNB (which led to the foreclosure), she should have expected that her “repurchase” should have been formalized, complete with the necessary authorizations and paperwork. Additionally, there is reason to believe that the Branch Manager did not have the full discretion to approve the “repurchase” by himself, as this involved an acquired asset of the bank. All the same, these matters should not be placed under consideration in the instant case as it is already the subject of a separate suit in the trial court.

Furthermore, the timing when Alma filed her opposition to the issuance of the writ, as well as the civil case, questioning the foreclosure and claiming the “repurchase” is suspect. She likely filed these matters only after she received word that a writ of possession would finally be issued in PNB’s favor. Hence, the possibility of her being evicted from the property would soon follow, regardless of the number of years she has been staying on it since the foreclosure proceeding and redemption period passed.

More importantly, PNB’s right to the writ of possession is solidified by the fact that the RTC’s order issuing the said writ has already become final and executory.

“On this note, the Court stresses that as a rule, a final judgment is immutable and unalterable. It cannot be disturbed or modified by any court even if the purpose of the alteration is to rectify perceived errors of fact or law. The doctrine of immutability of judgment is for the purpose of avoiding delay in the administration of justice and of putting an end to judicial controversies which cannot drag perpetually. Pursuant to this doctrine, courts have the ministerial duty

⁶⁴ CA *rollo*, p. 22.

⁶⁵ Records, pp. 33-39.

⁶⁶ *Id.* at 40-43.

to enforce judgment that already attained finality. Notably, there are established exceptions to the foregoing rule, namely: (i) the correction of clerical errors; (ii) presence of *nunc pro tunc* entries, which cause no prejudice to any party; (iii) void judgment; and, (iv) whenever circumstances transpire after the finality of the judgment which renders the execution unjust and inequitable.⁶⁷

In the case at bench, the aforementioned exceptions are not present. To stress, the August 17, 2011 Resolution of the RTC which granted PNB's petition for the issuance of a writ of possession already became final and executory on September 15, 2011, as evidenced by a Certificate of Finality⁶⁸ dated November 21, 2011. Alma filed an opposition more than two months after the issuance of the writ became final and executory. Although this matter was not immediately raised in the RTC, it is a vital point which must not be overlooked since it demonstrated that Alma cannot simply object to the issuance of the writ by filing a mere opposition or motion.

Another point. Alma argues that her right to due process was violated as she was not notified of PNB's petition for the issuance of a writ of possession. Her contention is without merit. "To be sure, no hearing is necessary prior to the issuance of a writ of possession, as it is a proceeding wherein relief is granted without giving the person against whom the relief is sought an opportunity to be heard.⁶⁹ By its very nature, an *ex-parte* petition for issuance of a writ of possession is a non-litigious proceeding. It is 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 in court, by which one party sues another for the enforcement of a wrong or protection of a right, or the prevention or redress of a wrong."⁷⁰

To conclude, while Alma can no longer question the issuance of a writ of possession in PNB's favor, she is not without recourse. She can still assert her claims in the separate suit which she filed before the trial court. Otherwise stated, the ruling in this case will not be conclusive on her claim of repurchase. Thus, it is within the trial court's discretion in the separate case to make a final determination regarding Alma's allegation of ownership over the property.

WHEREFORE, the petition is **GRANTED**. The assailed January 23, 2014 Decision and July 28, 2014 Resolution of the Court of Appeals in CA-G.R. CV No. 02836 are hereby **REVERSED and SET ASIDE**. The Order dated February 21, 2012 of the Regional Trial Court, Branch 23, of Molave, Zamboanga del Sur in Special Case No. 2011-50-090 is **REINSTATED**. Costs on respondent.

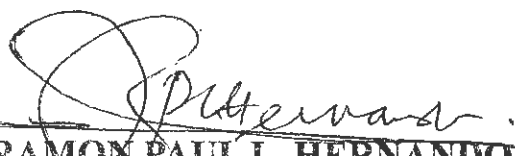
⁶⁷ *HH & Co. Agricultural Corp. v. Perlas*, supra note 61, citing *Mercury Drug Corp. v. Spouses Huang*, 817 Phil. 434, 445-446 (2017).

⁶⁸ *Rollo*, p. 66; records, p. 16.


⁶⁹ *Spouses Cabasal v. BPI Family Savings Bank, Inc.*, supra note 49, citing *LZK Holdings and Development Corporation v. Planters Development Bank*, 725 Phil. 83, 93 (2014) and *Espinoza v. United Overseas Bank Phils.*, 630 Phil. 342, 348 (2010).

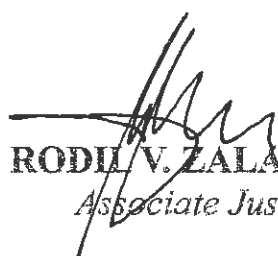
⁷⁰ *Id.*


SO ORDERED.


RAMON PAUL L. HERNANDO
Associate Justice

WE CONCUR:


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson



RODIL V. ZALAMEDA
Associate Justice


RICARDO R. ROSARIO
Associate Justice


JOSE MIDAS P. MARQUEZ
Associate Justice

ATTESTATION

I attest 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.


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I hereby 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