

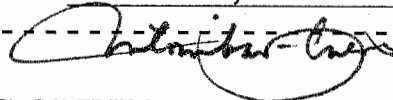
EN BANC

G.R. No. 216603 – JAIME MANUEL N. LEGARDA, Petitioner, v. CLERK OF COURT OF THE REGIONAL TRIAL COURT OF MUNTINLUPA CITY and BENJAMIN CALAWAGAN, Respondents.

Promulgated:

December 5, 2023

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CONCURRING OPINION

CAGUIOA, J.:

Confronted with a scenario where the highest bidder in a foreclosure sale assigned all his rights and interest in the sale before the end of the redemption period, the Court here is asked to resolve whether *mandamus* lies against the *ex-officio* sheriff, herein respondent Clerk of Court of the Regional Trial Court (RTC) of Muntinlupa, for the issuance of a final certificate of sale in favor of the assignee, petitioner Jaime Manuel N. Legarda (Legarda).

The *ponencia* rules that Legarda is not entitled to the extraordinary remedy of *mandamus* primarily because his right over the issuance of the final certificate of sale is neither indubitably granted by law nor inferable as a matter of law.<sup>1</sup> Particularly, the *ponencia* makes a distinction in the formulation of the provision on final conveyance of properties sold on execution under the 1964 Rules of Court, on the one hand, and in the 1997 Rules of Civil Procedure, on the other. The *ponencia* then concludes that the prevailing rule does not contemplate the issuance of a final certificate of sale in favor of an assignee.

Under Section 35, Rule 39 of the 1964 Rules of Court,<sup>2</sup> an “assignee” was expressly entitled to the conveyance of property sold on execution in lieu of the purchaser or the last redemptioner, as the case may be. However,

<sup>1</sup> *Ponencia*, p. 7.

<sup>2</sup> The pertinent portions of Section 35, Rule 39 of the 1964 Rules of Court reads:

Section 35. *Deed and possession to be given at expiration of redemption period. By whom executed or given.* — If no redemption be made within twelve (12) months after the sale, **the purchaser, or his assignee, is entitled to a conveyance and possession of 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, or his assignee, is entitled to the conveyance and possession;** but in all cases the judgment debtor shall have the entire period of twelve (12) months from the date of the sale to redeem the property. ... Upon the execution and delivery of said deed *the purchaser, or redemptioner, or his assignee, shall be substituted to and acquire all the right, title, interest and claim of the judgment debtor to the property as of the time of the levy[.]* (Emphasis supplied)



Section 33,<sup>3</sup> Rule 39 of the 1997 Rules of Civil Procedure expressly deleted all reference to an assignee, and now provides that only the purchaser or the last redemptioner has a clear legal right to the issuance of the final certificate of sale in their name.<sup>4</sup> Following the general rule on amendment by deletion,<sup>5</sup> the omission of the word “assignee” in the present rule reveals the intention to effect a change in its meaning, i.e., a final deed of sale may no longer issue in favor of a purchaser’s or last redemptioner’s assignee.

On the same basis, the *ponencia* finds that the Clerk of Court of the RTC of Muntinlupa did not have a ministerial duty—compellable by *mandamus*—to issue a final certificate of sale in the name of the assignee, Legarda.

I fully concur with the *ponencia*.

I submit this Concurring Opinion to expound on the ministerial quality of the duty to issue a final certificate of sale solely with respect to the purchaser or the last redemptioner, and to further examine the evolution of our Rules of Court to corroborate this conclusion.

*First*, as astutely observed by Chief Justice Alexander G. Gesmundo (Chief Justice Gesmundo) during the deliberations of this case, the ministerial character of the issuance of the final certificate of sale is grounded on the transactions which precede the same, i.e., the auction sale of the property, and any redemption made or the failure to redeem within the one year period.<sup>6</sup> As all of these transactions occur under the jurisdiction of, and within the confines of the proceedings before, the trial court,<sup>7</sup> there is no need for the trial court to further inquire into these matters. Accordingly, the court officer’s issuance of the final certificate of sale in favor of the purchaser or redemptioner becomes merely ministerial. This is in stark contrast with an assignment by a purchaser or redemptioner to another person, which requires the trial court to receive evidence to determine the rights of each party under such assignment.<sup>8</sup>

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<sup>3</sup> Section 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. (Emphasis supplied)

<sup>4</sup> *Ponencia*, p. 9.

<sup>5</sup> See *Laguna Metts Corp. v. Court of Appeals*, 611 Phil. 530 (2009) [Per J. Corona, First Division].

<sup>6</sup> Chief Justice Gesmundo, Concurring Opinion, p. 5.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 7.



To demonstrate the processes in which the person of the purchaser and a redemptioner comes within the knowledge of the court, Chief Justice Gesmundo incisively referenced Section 19, Rule 39 of the 1997 Rules of Civil Procedure which mandates that the execution sale be conducted by an officer of the court, or his or her deputies; and Section 28, Rule 39 of the 1997 Rules of Civil Procedure which requires redemptioners to provide a written notice of redemption to the officer who made the execution sale.

Notably, a redemptioner is not necessarily privy to the proceedings leading to the auction sale, and is, on the first instance, a stranger to the public officer who conducted the sale. This is precisely because a redemptioner is “a creditor having a lien by virtue of an attachment, judgment or mortgage on the property sold, *subsequent* to the lien under which the property was sold.”<sup>9</sup>

Thus, unlike a judgment obligor, Section 30, Rule 39 of the 1997 Rules of Civil Procedure mandates a redemptioner to prove his right to redeem by producing documents establishing such right,<sup>10</sup> and an affidavit showing the amount then actually due on the lien, thus:

Section 30. *Proof required of redemptioner.*— A redemptioner *must produce to the officer, or person from whom he seeks to redeem, and serve with his notice to the officer* a copy of the **judgment or final order** under which he claims the right to redeem, certified by the clerk of the court wherein the judgment or final order is entered, or, if he redeems upon a mortgage or other lien, a **memorandum of the record** thereof, certified by the registrar of deeds, or an **original or certified copy of any assignment** necessary to establish his claim; and an affidavit executed by him or his agent, showing the amount then actually due on the lien. (Emphasis supplied)

Accordingly, by express language of the Rules of Court, a redemptioner is bound to *introduce himself into the proceedings relating to the auction sale* by making it known, to the officer who made the sale or to a prior redemptioner, the existence and extent of his or her rights over the subject property.

This, to my mind, further strengthens the rationale for the deletion of the word “assignee” from Section 33, then Section 35, of Rule 39 of the 1997 Rules of Civil Procedure. Taking into account the procedures outlined in the Rules of Court through which the purchaser and the redemptioner/s, if any, must necessarily come within the purview of the trial court, the trial court may easily verify the validity of the execution sale of the real property, as well as any redemption made by the judgment debtor or a redemptioner.

<sup>9</sup> See RULES OF COURT, Rule 39, sec. 27(b). (Emphasis supplied)

<sup>10</sup> *Cayton, et al. v. Zeonnix Trading Corp., et al.*, 618 Phil. 136 (2009) [Per J. Nachura, Third Division].



Accordingly, the final act of issuing a certificate of sale in favor of the purchaser or last redemptioner becomes purely ministerial – it occurs simply as a legal and logical consequence of the transactions to which the trial court is privy. The officer who issues the certificate exercises no discretion in the determination of a purchaser or last redemptioner's entitlement to a final certificate of sale.

*Second*, notably, Section 30, Rule 39 of the 1997 Rules of Civil Procedure includes as a requirement the submission of “an original or certified copy of an *assignment*, necessary to establish [the redemptioner's] claim.” This language is derived from then Section 32, Rule 39 of the 1964 Rules of Court:

Sec. 32. *Proof required of redemptioner.*— A redemptioner must produce to the officer, or person from whom he seeks to redeem, and serve with his notice to the officer: (a) A copy of the judgment or order under which he claims the right to redeem, certified by the clerk or judge of the court wherein the judgment is docketed; or, if he redeems upon a mortgage or other lien, a memorandum of the record thereof, certified by the registrar of deeds; (b) A copy of any **assignment** necessary to establish his claim, verified by the affidavit of himself, or of a subscribing witness thereto; (c) An affidavit by himself or his agent, showing the amount then actually due on the lien. (Emphasis supplied)

The exact provision is also embodied in then Section 28, Rule 39 of the 1940 Rules of Court, thus:

SECTION 28. *Proof Required of Redemptioner.* — A redemptioner must produce to the officer, or person from whom he seeks to redeem, and serve with his notice to the officer:

(a) A copy of the judgment or order under which he claims the right to redeem, certified by the clerk or judge of the court wherein the judgment is docketed; or, if he redeems upon a mortgage or other lien, a memorandum of the record thereof, certified by the registrar of deeds;

(b) A copy of any **assignment** necessary to establish his claim, verified by the affidavit of himself, or of a subscribing witness thereto;

(c) An affidavit by himself or his agent, showing the amount then actually due on the lien. (Emphasis supplied)



Several United States statutes on the same subject likewise contain a derivative of this provision (e.g., Arizona,<sup>11</sup> Idaho,<sup>12</sup> South Dakota,<sup>13</sup> Virgin Islands<sup>14</sup>).

A review of American jurisprudence reveals that the “assignment” referred to in this provision relates to a creditor’s assignment of judgment<sup>15</sup> or assignment of mortgage,<sup>16</sup> i.e., an assignment made by a redemptioner.

As such, it would seem that the present Rules of Court still contemplate the issuance of a final certificate of sale in favor of a redemptioner’s assignee. However, it must be considered that the 1964 Rules of Court,<sup>17</sup> the 1940 Rules of Court,<sup>18</sup> and the relevant United States statutes<sup>19</sup> regarding sale on execution all make express mention of an “assignee.” Indubitably, our former rules and the United States statutes envision the issuance of a certificate of sale in favor of a purchaser’s or redemptioner’s assignee.

In contrast, and as the *ponencia* aptly observes, the 1997 Rules of Civil Procedure diverged from the consistent language of the earlier rules by removing all mention of the term “assignee” in the present Section 35, Rule 39.<sup>20</sup> This deletion is actually not constrained to Section 35, but is likewise effected in Section 32 on rents and income pending redemption. References to an assignee, which were present in Rule 39 of the 1967 and 1940 Rules of Court, were removed in the present rules, thus:

<b>1967 Rules of Court, Rule 39, Section 34 1940 Rules of Court, Rule 39, Section 30</b>	<b>1997 Rules of Civil Procedure Rule 39, Section 32</b>
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<sup>11</sup> Ariz. Rev. Stat. § 12-1287 (LexisNexis, Lexis Advance through all 2023 legislation, including the 56th Legislature’s 1st Regular session).

<sup>12</sup> Idaho Code § 11-405 (Lexis Advance through all legislation from the 2023 Regular Session).

<sup>13</sup> S.D. Codified Laws § 21-52-16 (LexisNexis, Lexis Advance through the 2023 Regular Session of the 98th South Dakota Legislative Assembly, with Acts effective through July 1, 2023).

<sup>14</sup> 5 V.I.C. § 498.

<sup>15</sup> See *Hunter v. Mauseau*, 91 Minn. 124, 97 N.W. 651 (1903).

<sup>16</sup> See *Williams v. Lash*, 8 Minn. 496 (1863).

<sup>17</sup> See RULES OF COURT (1967), Rule 39, sec. 30 and 31.

<sup>18</sup> See RULES OF COURT (1940), Rule 39, sec. 30 and 31.

<sup>19</sup> See Idaho Code § 11-403 (Lexis Advance through all legislation from the 2023 Regular Session); S.D. Codified Laws § 15-19-23 (LexisNexis, Lexis Advance through the 2023 Regular Session of the 98th South Dakota Legislative Assembly, with Acts effective through July 1, 2023); Wyo. Stat. Ann. § 1-18-104 (Lexis Advance through 2023 General Session. Subject to revisions by LSO).

<sup>20</sup> *Ponencia*, pp. 9–10.

SEC. 34. *Rents and profits pending redemption. Statement thereof and credit therefor on redemption.*— The purchaser, from the time of the sale until a redemption, and a redemptioner, from the time of his redemption until another redemption, is entitled to receive the rents of the property sold or the value of the use and occupation thereof when such property is in the possession of a tenant. But when any such rents and profits have been received by the *judgment creditor or purchaser, or by a redemptioner, or by the assignee of either of them*, from property thus sold preceding such redemption, the amounts of such rents and profits shall be a credit upon the redemption money to be paid; and, if a later redemptioner or the judgment debtor, before the expiration of the time allowed for such redemption demands in writing of such *creditor, purchaser, or prior redemptioner, or his assigns*, a written and verified statement of the amounts of the rents and profits thus received, the period of redemption is extended five (5) days after such demand is complied with and such sworn statement given to such later redemptioner or debtor. If such statement is not so given within one (1) month from and after such demand, such redemptioner or debtor may bring an action to compel an accounting and disclosure of such rents and profits, and until fifteen (15) days from and after the final determination of such action, the right of redemption is extended to such redemptioner or debtor. (Emphasis supplied)

SEC. 32. *Rents, earnings, and income of property pending redemption.*— The *purchaser or a redemptioner* shall not be entitled to receive the rents, earnings and income of the property sold on execution, or the value of the use and occupation thereof when such property is in the possession of a tenant. All rents, earnings and income derived from the property pending redemption shall belong to the judgment obligor until the expiration of his period of redemption. (Emphasis supplied)

In fact, there is presently no longer any reference whatsoever to an “assignee” under the entire Rule 39 of the 1997 Rules of Civil Procedure. This ***consistent omission*** embodies a deliberate intent to remove an assignee from the rules governing a sale on execution, including the issuance of a final certificate of sale. In this light, the retention of the subject phrase requiring a redemptioner to produce the original/certified true copy of an assignment, if any, appears to be unintended.

Remarkably, and in connection to the present petition involving an assignee of the highest bidder, no version of our Rules of Court outlines a procedure on how a purchaser’s assignee may establish his or her right to redeem.

*Lastly*, applying the general rules of contract, Legarda's broad reliance on the deed of assignment to establish his entitlement to a final certificate in his name is without merit. To recall, Legarda argues that by virtue of a deed of assignment, he had succeeded to the purchaser's right to the ministerial issuance of a final certificate of sale<sup>21</sup> and, thus, asserts that the Clerk of Court of the RTC of Muntinlupa unlawfully refused to issue a deed in his favor, it being that he has already stepped into the shoes of the purchaser, who had a clear, unclouded, and established right to the same.<sup>22</sup> Legarda's contention, however, fails to take into account the necessity to determine the validity of, and the extent of the rights and obligations conveyed in, the deed of assignment.

It is an elementary rule of contracts that the contracting parties are free to stipulate on the terms of their contract as they see fit, for as long as the terms are not contrary to law, morals, good customs, public order, and public policy.<sup>23</sup> Bearing this in mind, a deed of assignment—the terms of which may vary depending on the will of the parties—is not at all times an absolute conveyance of all the rights and obligations which are embodied therein.<sup>24</sup> Verily, the parties to a deed of assignment may, for instance, set limits to the exercise of the rights conveyed therein, contain conditions before the right conveyed may be exercised, or indicate a period of effectivity of such assignment.

As such, while the notarized deed of assignment executed between Legarda and the highest bidder enjoys the *prima facie* presumption of authenticity,<sup>25</sup> and carries evidentiary weight with respect to its due execution,<sup>26</sup> the following remains to be determined: (1) the validity of the deed of assignment, including the terms thereof; and (2) the scope of, as well as any limitations to, the rights conveyed therein.

In this connection, I likewise fully concur with the observations made by Chief Justice Gesmundo—said determination cannot be considered as merely ministerial as it would involve discretion which cannot be exercised by a clerk of court or a sheriff.<sup>27</sup> The power and the discretionary duty to

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<sup>21</sup> *Ponencia*, p. 5.

<sup>22</sup> *Id.*

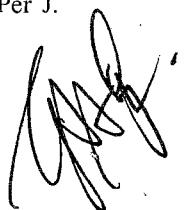
<sup>23</sup> CIVIL CODE OF THE PHILIPPINES, art. 1306.

<sup>24</sup> See also *Bangko Sentral ng Pilipinas v. Libo-on*, 773 Phil. 229 (2015) [Per J. Peralta, Third Division]; *Cebu Contractors Consortium Co. v. Court of Appeals*, 454 Phil. 650 (2003) [Per J. Azcuna, First Division]; and *Citizens Surety and Insurance Co., Inc. v. Court of Appeals*, 245 Phil. 701 (1988) [Per J. Gutierrez, Jr., Third Division].

<sup>25</sup> See *Cabilao v. Tampan*, G.R. No. 209702, March 23, 2022 [Per J. Hernando, Second Division].

<sup>26</sup> See *Rodriguez v. Your Own Home Development Corporation (YOHDC)*, 838 Phil. 749 (2018) [Per J. Leonen, Third Division].

<sup>27</sup> Chief Justice Gesmundo, Concurring Opinion, p. 7.

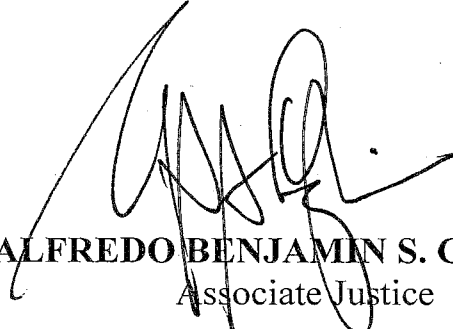


render a binding pronouncement on these matters can be reposed only on a court properly vested with the jurisdiction over the subject matter.<sup>28</sup>

Indeed, to allow the deed of assignment to be the basis of the issuance of a final certificate of sale in the name of a person other than the purchaser or last redemptioner effectively imposes upon the officer who made the sale the duty to ascertain the validity and scope of the assignment. Clearly, the public officer cannot be compelled to perform this duty through a writ of *mandamus*, as this function is not only discretionary in nature, but is utterly beyond the officer's powers to perform.

All told, I agree that *mandamus* does not lie against respondent Clerk of Court of the RTC of Muntinlupa. Legarda cannot, through this petition for *mandamus*, seek the enforcement of the subject deed of assignment.

**ACCORDINGLY**, I concur with the *ponencia* and vote to **DENY** the petition.



**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

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<sup>28</sup> *Id.*