

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

GESMUNDO, C.J.:

I fully concur with the *ponencia* circulated by the esteemed Associate Justice Antonio T. Kho, Jr. I write this Concurring Opinion to share my perspective on the matter of the deletion of “assignee” from Rule 39, Section 33 of the 1997 Rules of Civil Procedure.

This Appeal by *Certiorari* under Rule 45 of the 1997 Rules of Civil Procedure traces its roots from a Petition for *Mandamus* filed by Jaime Manuel N. Legarda (Legarda) against the Clerk of Court of the Regional Trial Court of Muntinlupa City (COC-RTC Muntinlupa) and Benjamin Calawagan (Calawagan). Legarda alleged that Calawagan had purchased, as the highest bidder, a parcel of land covered by Transfer Certificate of Title (TCT) No. 210835 (subject property) at a foreclosure sale. A Certificate of Sale was consequently issued in Calawagan’s favor. During the redemption period, Calawagan and Legarda executed a Deed of Assignment over the subject property whereby Calawagan assigned to Legarda all his rights and interests under the Certificate of Sale in exchange for the amount of PHP 3,000,000.00. This assignment was annotated on TCT No. 210835.¹

Legarda informed the COC-RTC Muntinlupa of said assignment and the lapse of the redemption period. Despite this, it did not issue a Final Certificate of Sale in his favor. Eventually, the COC-RTC Muntinlupa responded to his request through a letter where it categorically refused to issue the same, reasoning that the issuance in favor of an assignee of a Final Certificate of Sale is not provided for under the Rules of Court. According to the COC-RTC Muntinlupa, the act of issuing said deed of sale in favor of Legarda could not be characterized as merely ministerial as it involves contentious matters beyond the scope of its duties. This prompted Legarda to

¹ *Ponencia*, p. 2.



file a Petition for *Mandamus* before Branch 256, Regional Trial Court of Muntinlupa City (RTC).²

The RTC granted the Petition for *Mandamus* and directed the COC-RTC Muntinlupa to issue the Final Certificate of Sale in Legarda's favor. On appeal, the Court of Appeals (CA) reversed and set aside the RTC ruling and, thus, dismissed Legarda's Petition for *Mandamus* for lack of merit. The CA also denied Legarda's Motion for Reconsideration. Hence, Legarda filed the instant Appeal before this Court.³

The *ponencia* denied the Appeal anchored on the ground that *mandamus* cannot lie because Legarda's right over the issuance of the Final Certificate of Sale, by virtue of the deed of assignment, is not indubitably granted by law or inferable as a matter of law. Thus, the COC-RTC Muntinlupa had no imperative duty to issue the same. Further, such issuance is not ministerial on the part of the COC-RTC Muntinlupa because it involves the exercise of judgment on the validity of the assignment.⁴

The *ponencia* observed that Rule 39, Section 33 of the 1997 Rules of Civil Procedure entitles only the purchaser and last redemptioner to the conveyance and possession of the subject property if no redemption was made after the sale, or if the subject property is so redeemed. This is supported by the deletion of the word "assignee" in Rule 39, Section 33 from the provision's precursor – Rule 39, Section 35 of the 1964 Rules of Court.⁵ Citing *Manila Electric Company v. N.E. Magno Construction, Inc.*,⁶ the *ponencia* declared that the deletion of the word "assignee" was done not because it was a mere superfluity or unnecessary in relation to a purchaser or redemptioner. Rather, it was deleted in order to give the provision a different construction – to limit the issuance of the Final Certificate of Sale only to the purchaser or last redemptioner.⁷ Also, for the *ponencia*, it may not be inferred as a matter of law that an assignee is one of those who are entitled to conveyance and possession of the subject property since an assignee is neither privy to the foreclosure nor does an assignee has a lien on the property subject of the foreclosure sale with right to redeem the same.⁸

The *ponencia* also ruled that the issuance of the Final Certificate of Sale to someone other than the purchaser is not ministerial because it would

² *Id.* at 2–3.

³ *Id.* at 3–4.

⁴ *Id.* at 7.

⁵ *Id.* at 9.

⁶ 794 Phil. 228, 238 (2016) [Per J. Perez, Third Division].

⁷ *Ponencia*, p. 10.

⁸ *Id.* at 12.

involve more than confirming the title already vested in the purchaser, in this case, Calawagan. It entails going past the proceedings of the foreclosure sale and looking into the propriety of the assignment to Legarda, which is beyond the purview of the COC-RTC Muntinlupa.⁹ Finally, the *ponencia* held that Legarda is not without any remedy to claim his rights and interests over the subject property. The *ponencia* explained that once a Final Certificate of Sale is issued in the name of Calawagan, Legarda may seek to enforce his rights through the appropriate deed of conveyance.¹⁰

I concur with the denial of the Appeal by *Certiorari* and write to delve into the rationale behind the deletion of the word “assignee” in Rule 39, Section 33 of the 1997 Rules of Civil Procedure, which was expressly included in Rule 39, Section 35 of the 1964 Rules of Court.

Rule 39, Section 33 provides that a purchaser or redemptioner shall be entitled to conveyance and possession of the subject property if no redemption is made within one year from the date of registration of the certificate of sale, viz.:

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.

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. (35a)

⁹ *Id.* at 15.

¹⁰ *Id.*



Section 33 originates from Rule 39, Section 31¹¹ of the 1940 Rules of Court, which in turn, was subsequently amended by Rule 39, Section 35¹² of the 1964 Rules of Court.

A comparison of Section 33 in the present Rules vis-à-vis Section 35 in the 1964 Rules of Court reveals that the following revisions were introduced:

Section **353**. *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~~ **one (1) year from the date of the registration of the certificate of 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 obligor shall have the entire period of ~~twelve (12) months~~ **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.

Upon the ~~execution and delivery~~ **expiration** of said deed ~~the right of redemption~~, the purchaser or redemptioner, ~~or his assignee~~, shall be substituted to and acquire all the rights, title, interest and claim of the judgment ~~debtor obligor~~ to the property as of the time of the levy, ~~except as against the judgment debtor in possession, in which case the substitution shall be effective as of the date of the deed~~. The possession of the property shall be given to the purchaser or last redemptioner by the

¹¹ Sec. 31. *Deed and Possession to Be Given at Expiration of Redemption Period. By Whom Executed or Given.* — If no redemption be made within twelve 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 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 months from the date 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. The possession shall be given by the same officer if no third parties are actually holding the property adversely to the judgment debtor.

¹² Sec. 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. 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. 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, except as against the judgment debtor in possession, in which case the substitution shall be effective as of the date of the deed. 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 debtor.

same officer unless a third party is actually holding the property adversely to the judgment ~~debtor~~ obligor. (35a)

Notably, Section 33 deleted the word “assignee” from the following statements:

1. “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[.]”
2. “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 ministerial character of the issuance of a Final Certificate of Sale in favor of a purchaser or redemptioner after the lapse of the one-year period without any redemption being made is well-established.

As early as 1957, in the case of *Manuel v. Philippine National Bank*,¹³ the Court held that “under the Rules of Court[,] the expiration of that one-year period forecloses the owner’s right to redeem, thus making the sheriff’s sale absolute. *The issuance thereafter of a final deed of sale becomes a mere formality, an act merely confirmatory of the title that is already in the purchaser and constituting official evidence of that fact.*”¹⁴ This was subsequently reiterated in, among others, *Calacala v. Republic*,¹⁵ *Delos Reyes v. Ramnani*,¹⁶ and *Akiapat v. Summit Bank (Rural Bank of Tublay [Benguet], Inc.)*.¹⁷

This ministerial quality of the duty to issue a Final Certificate of Sale is grounded on the transactions that precedes such issuance. *First*, the auction sale itself wherein which the purchaser acquires the subject property, as well as the redemption by a redemptioner, transpires before the trial court. *Second*, the failure to redeem within the one-year period also occurs before the trial court.

¹³ 101 Phil. 968 (1957) [Per J. Reyes, A., *En Banc*].

¹⁴ *Id.* at 971.

¹⁵ 502 Phil. 681, 691 (2005) [Per J. Garcia, Third Division].

¹⁶ 635 Phil. 242, 247 (2010) [Per J. Del Castillo, First Division].

¹⁷ G.R. Nos. 222505 and 222776, June 28, 2021 [Per J. Inting, Third Division] at 9–10. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.


This is demonstrated by the following provisions in Rule 39. The public sale is governed by Section 19 thereof, which provides that an officer of the court, or their deputies, conducts the execution sale:

Section 19. How Property Sold on Execution; Who May Direct Manner and Order of Sale. — All sales of property under execution must be made at public auction, to the highest bidder, to start at the exact time fixed in the notice. After sufficient property has been sold to satisfy the execution, no more shall be sold and any excess property or proceeds of the sale shall be promptly delivered to the judgment obligor or his authorized representative, unless otherwise directed by the judgment or order of the court. When the sale is of real property, consisting of several known lots, they must be sold separately; or, when a portion of such real property is claimed by a third person, he may require it to be sold separately. When the sale is of personal property capable of manual delivery, it must be sold within view of those attending the same and in such parcels as are likely to bring the highest price. The judgment obligor, if present at the sale, may direct the order in which property, real or personal, shall be sold, when such property consists of several known lots or parcels which can be sold to advantage separately. Neither the officer conducting the execution sale, nor his deputies, can become a purchaser, nor be interested directly or indirectly in any purchase at such sale. (21a) (Emphasis supplied)

Meanwhile, Rule 39, Section 28 provides that written notice of any redemption must be given to the officer who made the sale:

Section 28. Time and Manner of, and Amounts Payable on, Successive Redemptions; Notice to be Given and Filed. — The judgment obligor, or redemptioner, may redeem the property from the purchaser, at any time within one (1) year from the date of the registration of the certificate of sale, by paying the purchaser the amount of his purchase, with one per centum per month interest thereon in addition, up to the time of redemption, together with the amount of any assessments or taxes which the purchaser may have paid thereon after purchase, and interest on such last named amount at the same rate; and if the purchaser be also a creditor having a prior lien to that of the redemptioner, other than the judgment under which such purchase was made, the amount of such other lien, with interest.

Property so redeemed may again be redeemed within sixty (60) days after the last redemption upon payment of the sum paid on the last redemption, with two per centum thereon in addition, and the amount of any assessments or taxes which the last redemptioner may have paid thereon after redemption by him, with interest on such last-named amount, and in addition, the amount of any liens held by said last redemptioner prior to his own, with interest. The property may be again, and as often as a redemptioner is so disposed, redeemed from any previous redemptioner within sixty (60) days after the last redemption, on paying the sum paid on the last previous redemption, with two per centum thereon in addition, and the amounts of any assessments or taxes which the last previous



redemptioner paid after the redemption thereon, with interest thereon, and the amount of any liens held by the last redemptioner prior to his own, with interest.

Written notice of any redemption must be given to the officer who made the sale and a duplicate filed with the registry of deeds of the place, and if any assessments or taxes are paid by the redemptioner or if he has or acquires any lien other than that upon which the redemption was made, notice thereof must in like manner be given to the officer and filed with the registry of deeds; if such notice be not filed, the property may be redeemed without paying such assessments, taxes, or liens. (30a) (Emphasis supplied)

In short, these underlying transactions, which precipitate the issuance or non-issuance of a Final Certificate of Sale, are within the purview of the trial court as it is privy to them.

Considering this, the trial court may easily verify (1) whether or not the sale of the real property, or its redemption, is valid, and (2) whether or not the original owner redeemed the same within the one-year period. There is no need for the trial court to receive evidence to inquire into these matters as it is privy to these transactions.

In contrast, an assignment by the purchaser or redemptioner to another person occurs outside the confines of the proceedings before the trial court. It is a transaction entered into by the purchaser or redemptioner with a person not party to the proceedings before the trial court and not within the jurisdiction of the trial court. The trial court is not privy to the assignment.

Hence, in order to verify the validity of such transaction – whether or not an assignment was validly made, as well as the terms thereof – the trial court would have to receive evidence and determine the rights and obligations of each party under such assignment. Without a doubt, such an undertaking cannot be characterized as merely ministerial in nature – it would involve the exercise of discretion. This exercise of discretion cannot be made by the clerk of court or the sheriff. Only a court properly vested with jurisdiction over the subject matter of the controversy would be able to render a binding pronouncement on the validity of such assignment.

This perspective is supported and reflected by the amendment introduced to Rule 15 by the 2019 Revised Rules of Civil Procedure concerning litigious and non-litigious motions. In particular, Rule 15, Section 4 of the 2019 Revised Rules of Civil Procedure provides that a motion for the issuance of an order directing the sheriff to execute the final certificate of sale is non-litigious:

Section 4. *Non-litigious Motions*. — Motions which the court may act upon without prejudicing the rights of adverse parties are non-litigious motions. These motions include:

- a) Motion for the issuance of an alias summons;
- b) Motion for extension to file answer;
- c) Motion for postponement;
- d) Motion for the issuance of a writ of execution;
- e) Motion for the issuance of an alias writ of execution;
- f) Motion for the issuance of a writ of possession;
- g) *Motion for the issuance of an order directing the sheriff to execute the final certificate of sale; and*
- h) Other similar motions.

These motions shall not be set for hearing and shall be resolved by the court within five (5) calendar days from receipt thereof. (n) (Emphasis supplied)

The Minutes of the Fifth Meeting of the Sub-Committee for the Revision of the 1997 Rules of Civil Procedure held on May 28, 2019 reveals the following discussion concerning litigious and non-litigious motions:

. . . Only litigious motions, as enumerated below, will be heard, subject to the discretion of the judge who shall issue a notice of hearing. Such motions shall be resolved within 15 calendar days from receipt of the opposition thereto. Likewise enumerated below are non-litigious motions and prohibited motions, which shall not be heard.

.....

The proposed new provision enumerates the non-litigious motions which, according to Justice Peralta, shall not be heard, but must be resolved within 7 calendar days.

There is no dispute that a motion for the issuance of an *alias* summons, a motion for the issuance of a writ or an *alias* writ of execution, a motion for extension to file answer and a motion to issue a writ of possession are non-litigious.

Further, the records of the Sub-Committee for the Revision of the 1997 Rules of Civil Procedure demonstrate that the following footnote accompanied Rule 15, Section 4 during the discussions:

This new provision defines non-litigious motions and gives some examples. These motions shall not be set for hearing but must be resolved by the court within 5 calendar days. The adverse party is also not required to file an opposition or comment thereto because his or her rights are not prejudiced by the non-litigious nature of said motions. There is no dispute that a motion for the issuance of an *alias* summons, a motion for the issuance of a writ or an *alias* writ of execution, a motion for extension to file answer, and a motion to issue a writ of possession are non-litigious. Anent the phrase "*other similar motions*," it is a catch-all provision.

The footnote to Rule 15, Section 5¹⁸ of the 2019 Amendments to the 1997 Rules of Civil Procedure in the records of the discussion of the Subcommittee for the Revision of the 1997 Rules of Civil Procedure is also illuminating as it provides the rationale behind the classification of motions as litigious:

This is a new provision that deals with litigious motions, which shall be resolved only after receipt of the opposition or the expiration of the period to file the opposition. . . . A "*motion to amend after a responsive pleading has been filed*" is also a litigious motion because amendment at this juncture is a matter of discretion on the part of the court. (Emphasis supplied)

By inference, the converse is true for a motion for issuance of an order directing the sheriff to execute the final certificate of sale. As discussed, it is well-established that its issuance to a purchaser or redemptioner is ministerial. Accordingly, it is a non-litigious motion and no opposition is necessary for the court to resolve the same.


¹⁸ Sec. 5. *Litigious Motions*. — (a) Litigious motions include:

- 1) Motion for bill of particulars;
- 2) Motion to dismiss;
- 3) Motion for new trial;
- 4) Motion for reconsideration;
- 5) Motion for execution pending appeal;
- 6) Motion to amend after a responsive pleading has been filed;
- 7) Motion to cancel statutory lien;
- 8) Motion for an order to break in or for a writ of demolition;
- 9) Motion for intervention;
- 10) Motion for judgment on the pleadings;
- 11) Motion for summary judgment;
- 12) Demurrer to evidence;
- 13) Motion to declare defendant in default; and
- 14) Other similar motions.

(b) All motions shall be served by personal service, accredited private courier or registered mail, or electronic means so as to ensure their receipt by the other party.

(c) The opposing party shall file his or her opposition to a litigious motion within five (5) calendar days from receipt thereof. No other submissions shall be considered by the court in the resolution of the motion.

The motion shall be resolved by the court within fifteen (15) calendar days from its receipt of the opposition thereto, or upon expiration of the period to file such opposition. (n)

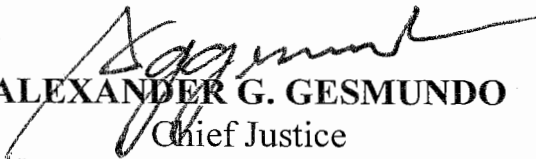


The same cannot be said for the issuance of an order directing the sheriff to execute the final certificate of sale in favor of an assignee. It cannot be considered as non-litigious in nature, an opportunity to file an opposition is necessary to afford due process to the relevant parties. This is because the trial court is not privy to the assignment; reception of evidence is necessary to determine the assignment's validity and applicability.

As correctly stated by the *ponente*, the proper remedy available to an assignee to enforce their rights under the assignment is through the appropriate deed of conveyance. If the purchaser or redemptioner refuses to honor the assignment, the assignee may resort to the courts by way of a complaint for specific performance.

Applying the foregoing to the instant case, I concur with the denial of the Appeal since the issuance of a Final Certificate of Sale in favor of an assignee cannot be, in any manner, characterized as ministerial in nature.

ACCORDINGLY, I CONCUR with the *ponencia* and vote to **DENY** the Petition.


ALEXANDER G. GESMUNDO
Chief Justice