



REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Baguio City

SECOND DIVISION

**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated April 26, 2023 which reads as follows:*

**“G.R. No. 255534 (Silvestre C. Untaran III, Elnora Untaran Samulde, Elmer Untaran, all heirs of Sps. Pedro Cerdena and Juana Cerdena, herein represented by Silvestre Untaran, Jr., Petitioners v. Lourdes Delubiar Tupas, Leonard Delubiar, Joel Ellazar, Jean Ellazar, Josie E. Deriada, Lilia D. Montano, Lorna D. Weismantel, Lilia Delubiar, Lina D. Reimann, Limuel Delubiar, Ma. Lany D. Dela Vega, Corazon Delubiar, all heirs of the late Wenceslao Ellazar, Jr. and Corazon Delubiar, herein represented by Ma. Louisa Raz, Respondents). — This Court resolves a Petition for Review on *Certiorari*<sup>1</sup> filed under Rule 45 of the Rules of Court assailing the Decision<sup>2</sup> and the Resolution<sup>3</sup> of the Court of Appeals (CA).**

Wenceslao Ellazar, Sr. (*Wenceslao, Sr.*) was the registered owner of a parcel of land identified as Lot No. 2075 and registered under Tax Declaration No. 0262 (*subject lot*). It is approximately 2,618 square meters and is located in Badiang, San Jose, Antique.<sup>4</sup> Due to non-payment of realty taxes and penalties in the amount of PHP 282.52, the subject lot was sold via public auction by the local government of San Jose, Antique on September 27, 1990. The winning bidders were Wenceslao Ellazar Jr. (*Wenceslao, Jr.*) and Corazon Delubiar (*Corazon*).<sup>5</sup>

Due to the failure of Wenceslao, Sr. to redeem the subject lot within one year from the date of the sale, the provincial treasurer of Antique issued a Final Bill of Sale<sup>6</sup> in favor of Wenceslao, Jr. and Corazon on March 17, 1992.<sup>7</sup>

<sup>1</sup> *Rollo*, pp. 14–30.

<sup>2</sup> *Id.* at 50–61. The May 30, 2019 Decision in CA-G.R. CV No. 06706 was penned by Associate Justice Emily R. Aliño-Geluz, and concurred in by Associate Justices Pamela Ann Abella Maxino and Dorothy P. Montejo-Gonzaga, Twentieth Division, Court of Appeals, Cebu City.

<sup>3</sup> *Id.* at 33–36. The October 22, 2020 Resolution in CA-G.R. CV No. 06706 was penned by Associate Justice Emily R. Aliño-Geluz, and concurred in by Associate Justices Pamela Ann Abella Maxino and Dorothy P. Montejo-Gonzaga, Former Twentieth Division, Court of Appeals, Cebu City.

<sup>4</sup> *Id.* at 78 & 80.

<sup>5</sup> *Id.* at 51, 64, & 78.

<sup>6</sup> *Id.* at 78–79.

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

Believing that they are the lawful owners of the subject lot, Wenceslao, Jr. and Corazon forcibly entered the subject lot and took possession from the heirs of Spouses Pedro Cerdena and Juana Cerdena (*Spouses Cerdena*), namely, Silvestre C. Untaran III, Elnora Untaran Samulde, and Elmer Untaran (*heirs of Cerdena*). Thus, the heirs of Cerdena filed an ejectment case against Wenceslao, Jr. and Corazon docketed as Civil Case No. 2000-5-3182.<sup>8</sup> During the pendency of the ejectment case, Wenceslao, Jr. died.<sup>9</sup>

The ejectment case was dismissed by the Municipal Trial Court (*MTC*).<sup>10</sup> On appeal, the Regional Trial Court (*RTC*) reversed the ruling of the MTC and ordered Corazon and the heirs of Wenceslao, Jr. to vacate the property.<sup>11</sup>

When the ejectment case was elevated to the CA via a Petition for Review docketed as CA-G.R. No. CEB SP No. 01203, the CA affirmed the ruling in favor of the heirs of Cerdena,<sup>12</sup> and Corazon and the heirs of Wenceslao, Jr. were ordered to vacate the subject lot.<sup>13</sup>

Then, the CA issued an Entry of Judgment on February 17, 2006. Subsequently, a Writ of Execution<sup>14</sup> dated October 13, 2006 was issued directing the sheriff to restore the possession of the heirs of Cerdena over the subject lot. This was accomplished on December 18, 2006.<sup>15</sup>

On July 19, 2009, Corazon died. In 2011, the heirs of Wenceslao, Jr. and Corazon, namely, Lourdes Delubiar Tupas, Leonard Delubiar, Joel Ellazar, Jean Ellazar, Josie E. Deriada, Lilia D. Montano, Lorna D. Weismantel, Lilia Delubiar, Lina D. Reimann, Limuel Delubiar, Ma. Lany D. Dela Vega (*heirs of Wenceslao, Jr. and Corazon*) filed a Petition for the issuance of a writ of possession against the heirs of Cerdena, docketed as Civil Case No. 10-09-3740 with Branch 12, RTC, San Jose, Antique.<sup>16</sup>

The RTC dismissed the Petition on the grounds of laches and *res judicata*. A Motion for Reconsideration was filed but the RTC denied the same. Thus, the case was elevated to the CA.<sup>17</sup>

<sup>8</sup> *Id.* at 52 & 54.

<sup>9</sup> *Id.* at 109.

<sup>10</sup> *Id.* at 52.

<sup>11</sup> *Id.* at 52 & 96.

<sup>12</sup> *Id.* at 52 & 109.

<sup>13</sup> *Id.* at 53.

<sup>14</sup> *Id.* at 96. The October 13, 2006 Writ of Execution in Civil Case No. 930 was penned by Judge Ma. Monina S. Misajon, Municipal Trial Court, San Jose, Antique.

<sup>15</sup> *Id.* at 52-53, 85, & 96-99.

<sup>16</sup> *Id.* at 52.

<sup>17</sup> *Id.*

The CA issued a Decision in CA-G.R. CV No. 04027 affirming the dismissal of the Petition due to several defects to the effect that no valid petition was filed with the RTC.<sup>18</sup>

On March 13, 2014, the heirs of Wenceslao, Jr. and Corazon filed another Petition<sup>19</sup> for the issuance of a writ of possession against the heirs of Cerdena, and the case was raffled to Branch 12, RTC, San Jose, Antique and docketed as Civil Case No. 2014-03-3897.<sup>20</sup>

In their Answer,<sup>21</sup> the heirs of Cerdena invoked the principle of *res judicata* claiming that the issue of possession had already been settled with finality in the previous ejectment case.<sup>22</sup> They likewise argued that the heirs of Wenceslao, Jr. and Corazon are guilty of laches as it took them approximately 20 years from the date of the auction sale before they filed the first Petition for the issuance of a writ of possession.<sup>23</sup>

The heirs of Wenceslao, Jr. and Corazon filed a Motion for a Summary Judgment arguing that the heirs of Cerdena failed to dispute the material allegations in the Petition and there is no longer any genuine issue that needs to be resolved. The RTC issued an Order denying the Motion.<sup>24</sup>

Subsequently, the heirs of Wenceslao, Jr. and Corazon filed a Compliance (Manifestation and Motion) praying to present evidence *ex parte* in view of the alleged unjustified delays in the proceedings.<sup>25</sup>

The RTC rendered its Order,<sup>26</sup> the dispositive portion of which states:

WHEREFORE, viewed in the light of the foregoing discussion, the motion to allow petitioners to present evidence ex-parte is hereby DENIED for want of merit. This case is hereby DISMISSED because of RES JUDICATA and LACHES. Respondents remain in possession of Lot 2075.

Accordingly, Atty. Silvestre Untaran III's motion to approve his withdrawal of appearance from this case is moot.

SO ORDERED.<sup>27</sup>

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 63-68.

<sup>20</sup> *Id.* at 63-68.

<sup>21</sup> *Id.* at 83-94.

<sup>22</sup> *Id.* at 84-92.

<sup>23</sup> *Id.* at 92-93.

<sup>24</sup> *Id.* at 53.

<sup>25</sup> *Id.* at 54.

<sup>26</sup> *Id.* at 101-104. The December 12, 2017 Order was penned by Judge Francisco S. Guzman of Branch 12, Regional Trial Court, San Jose, Antique.

<sup>27</sup> *Id.* at 104.

The RTC reiterated the ruling in Civil Case No. 10-09-3740 and declared that *res judicata* had already set in. The RTC also found the heirs of Wenceslao, Jr. and Corazon guilty of laches for sitting on their rights for an unreasonable length of time.<sup>28</sup>

The RTC also refused to allow the heirs of Wenceslao, Jr. and Corazon to present evidence *ex-parte* as it was tantamount to a summary judgment.<sup>29</sup>

Finally, the RTC did not give credence to the argument of the heirs of Wenceslao, Jr. and Corazon that their title to the property was already established by their predecessor-in-interest. It opined that there is a material conflict in the documentary evidence they submitted that should be fully explained in a full-blown hearing. Considering that the issue of ownership has not yet been fully established by preponderance of evidence in a full-blown hearing, the RTC did not foreclose the possibility of availing other legal remedies to settle this issue.<sup>30</sup>

Upon appeal to the CA, a Decision<sup>31</sup> was rendered, which stated that:

**WHEREFORE**, the appeal is GRANTED. The Order dated December 12, 2017 issued by Branch 12 of the RTC of San Jose, Antique, in Civil Case No. 2014-03-3897, is hereby REVERSED and SET ASIDE. Accordingly, the petition for the issuance of a writ of possession is GRANTED. The court *a quo* is DIRECTED to issue a writ of possession in favor of petitioners-appellants.

**SO ORDERED.**<sup>32</sup> (Emphasis in the original)

In directing the issuance of a writ of possession, the CA stated that the fact that the heirs of Cerdena are the prevailing party in the ejectment case does not preclude the filing of a Petition for the issuance of a writ of possession to place the heirs of Wenceslao, Jr. and Corazon in possession of a property that their predecessors-in-interest acquired in an auction sale. The CA stressed that possession in an ejectment suit refers only to possession *de facto*, or actual or material possession, and not one flowing out of ownership.<sup>33</sup>

The CA also held that the ruling in CA-G.R. CV No. 04027, which disposed of the first Petition for the issuance of a writ of possession filed by the heirs of Wenceslao, Jr. and Corazon, does not constitute *res judicata*. The

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<sup>28</sup> *Id.* at 103.

<sup>29</sup> *Id.* at 103–104.

<sup>30</sup> *Id.* at 104.

<sup>31</sup> *Id.* at 50–60. Dated May 30, 2019.

<sup>32</sup> *Id.* at 60.

<sup>33</sup> *Id.* at 57.

CA explained that the dismissal of the Petition was not based on the merits of the case and was without prejudice to its refiling.<sup>34</sup>

Likewise, it was ruled that the heirs of Wenceslao, Jr. and Corazon were not guilty of laches. The CA found that they never abandoned their claim over the subject lot. Although a considerable length of time passed from the time the Final Bill of Sale was issued in 1992 up to the time the first Petition was filed in 2010, they did not stop pursuing their case and continued to assert their rights over the subject lot.<sup>35</sup>

On the issue of whether a writ of possession may issue in auction sales resulting from non-payment of realty taxes, the CA reasoned that since a writ of possession is a mere incident in the transfer of title, there is no reason for the writ not to be issued.<sup>36</sup>

Subsequently, the CA issued a Resolution<sup>37</sup> denying the Motion for Reconsideration<sup>38</sup> filed by the heirs of Cerdena for lack of merit.<sup>39</sup>

Hence, the instant Petition.

In the present Petition, the heirs of Cerdena raise the following arguments: (1) *res judicata* and laches apply in the present controversy;<sup>40</sup> (2) since it was not proven that ownership over Lot No. 2075 was consolidated in the name of the heirs of Wenceslao, Jr. and Corazon, the issuance of a writ of possession is premature;<sup>41</sup> and (3) the order of the CA granting the issuance of a writ of possession to the heirs of Wenceslao, Jr. and Corazon is tantamount to a denial of the right of the heirs of Cerdena to be heard on their claim, thus violating their right to due process of law.<sup>42</sup>

On the other hand, in the Comment<sup>43</sup> filed by the heirs of Wenceslao, Jr. and Corazon, they contended that the CA's ruling instructing the issuance of a writ of possession is proper because: (1) the heirs of Cerdena never disputed the fact that the subject lot was sold in a public auction and that they failed to redeem the property within the period provided by law;<sup>44</sup> (2) the Final Bill of Sale that was issued on March 17, 1992 consolidated the ownership of the subject lot in favor of Wenceslao, Jr. and Corazon;<sup>45</sup> (3) *res judicata* does

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at 57-58.

<sup>36</sup> *Id.* at 59-60.

<sup>37</sup> *Id.* at 33-36. Dated October 22, 2020.

<sup>38</sup> *Id.* at 37-42.

<sup>39</sup> *Id.* at 36.

<sup>40</sup> *Id.* at 20-23.

<sup>41</sup> *Id.* at 23-24.

<sup>42</sup> *Id.* at 25.

<sup>43</sup> *Id.* at 135-139.

<sup>44</sup> *Id.* at 135-136.

<sup>45</sup> *Id.* at 135.

not apply since the dismissal of the first Petition for the issuance of a writ of possession in CA-G.R. CV No. 04027 was not based on the merits;<sup>46</sup> and (4) laches does not apply because the heirs of Wenceslao Jr. and Corazon did not stop pursuing their case despite the lapse of time.<sup>47</sup>

Meanwhile, in the Reply<sup>48</sup> filed by the heirs of Cerdena, they insisted that *res judicata* applies because the relief pursued by the heirs of Wenceslao, Jr. and Corazon in both Petitions for the issuance of a writ of possession is similar in that both prayed that physical possession over the subject lot be granted to them.<sup>49</sup>

The critical issue to be resolved in this case is whether a writ of possession may be issued in favor of the successors-in-interest of purchasers in an auction sale resulting from non-payment of realty taxes without the appropriate principal action.

*A writ of possession cannot be issued in favor of the successors-in-interest of purchasers in an auction sale resulting from non-payment of realty taxes without the appropriate principal or main action. Without such action, the Petition for writ of possession is improper*

At the outset, it is worthy to highlight that neither the parties nor the lower courts raised the absence of a principal or main action involving the registration of the transfer of the subject lot in favor of the heirs of Wenceslao, Sr.

Section 8, Rule 51 of the Rules of Court provides:

**Section 8.** *Questions that may be decided.* — No error which does not affect the jurisdiction over the subject matter or the validity of the judgment appealed from or the proceedings therein will be considered unless stated in the assignment of errors, or closely related to or dependent on an assigned error and properly argued in the brief, save as the court may pass upon plain errors and clerical errors.<sup>50</sup> (Emphasis in the original)

As a general rule, a judgment of a court upon a subject within its general jurisdiction, but which is not before it by any statement or claim of the parties, and is foreign to the issues submitted for its determination, is a nullity.<sup>51</sup> While

<sup>46</sup> *Id.* at 136.

<sup>47</sup> *Id.* at 136–137.

<sup>48</sup> *Id.* at 277–281.

<sup>49</sup> *Id.* at 278–279.

<sup>50</sup> RULES OF COURT, Rule 51, sec. 8.

<sup>51</sup> *Lam v. Chua*, 469 Phil. 852, 864 (2004) [Per J. Austria-Martinez, Second Division].

an error which was not assigned and argued may not be considered, there are recognized exceptions, such as when such error is: (1) closely related to or dependent on an assigned error or (2) affects the jurisdiction over the subject matter on the validity of the judgment.<sup>52</sup>

This Court has settled that courts have ample authority to rule on matters not raised by the parties in their pleadings when such issues are indispensable or necessary to the just and final resolution of the pleaded issues.<sup>53</sup> In *Insular Life Assurance Co., Ltd. Employees Assoc.-NATU v. Insular Life Assurance Co., Ltd.*,<sup>54</sup> this Court explained that:

*[T]he Supreme Court has ample authority to review and resolve matters not assigned and specified as errors by either of the parties in the appeal if it finds the consideration and determination of the same essential and indispensable in order to arrive at a just decision in the case. This Court, thus, has the authority to waive the lack of proper assignment of errors if the unassigned errors closely relate to errors properly pinpointed out or if the unassigned errors refer to matters upon which the determination of the questions raised by the errors properly assigned depend.*

The same also applies to issues not specifically raised by the parties. The Supreme Court, likewise, has broad discretionary powers, in the resolution of a controversy, to take into consideration matters on record which the parties fail to submit to the Court as specific questions for determination. Where the issues already raised also rest on other issues not specifically presented, as long as the latter issues bear relevance and close relation to the former and as long as they arise from matters on record, the Court has the authority to include them in its discussion of the controversy as well as to pass upon them. In brief, *in those cases wherein questions not particularly raised by the parties surface as necessary for the complete adjudication of the rights and obligations of the parties and such questions fall within the issues already framed by the parties, the interests of justice dictate that the Court consider and resolve them.*<sup>55</sup> (Emphasis supplied and citations omitted)

Here, the determination of the propriety of the Petition for the issuance of a writ of possession without a principal or main action is closely related to the resolution of whether the heirs of Wenceslao, Jr. and Corazon are entitled to the relief they are praying for. Invoking the broad discretionary power to waive the lack of proper assignment of errors and to consider errors not assigned, this Court finds it essential to address this issue.

In ordering the issuance of a writ of possession, the CA pointed out that it is unclear whether a writ of possession may issue in auction sales resulting from non-payment of realty taxes. It added that even the Local Government

<sup>52</sup> *Multi-Realty Development Corp v. Mukati Tuscan Condominium Corp.*, 524 Phil. 318 (2006) [Per J. Callejo, Sr., First Division].

<sup>53</sup> *Hi-Tone Marketing Corporation v. Baikal Realty Corporation*, 480 Phil. 545 (2004) [Per J. Tinga, Second Division].

<sup>54</sup> 166 Phil. 505 (1977) [Per J. Castro, *En Banc*].

<sup>55</sup> *Id.* at 518–519.

Code does not provide the procedure after a final deed is issued to the purchaser. The CA reasoned that a writ of possession is a mere incident in the transfer of title as a result of the auction sale.<sup>56</sup> The rationale of the CA is inaccurate.

In understanding the relief that the heirs of Wenceslao, Jr. and Corazon are praying for the issuance of a writ of possession, it is imperative to discuss its nature. A writ of possession is defined as 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>57</sup> This Court has recognized the instances where a writ of possession may be issued including the following:

- (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>58</sup> (Citation omitted)

Admittedly, a writ of possession arising from a realty tax delinquency sale is not among the enumerated circumstances wherein the issuance of the writ is permitted. However, this Court has clarified that “*there is no law or jurisprudence which provides that the petition for the issuance of a writ of possession depends on the nature of the proceeding in which it is filed.*”<sup>59</sup> Further, this Court declared that:

[T]he basis for the grant of the writ of possession in this case is respondent’s ownership of the property by virtue of a tax delinquency sale in [his or] her favor, and by virtue of [his or] her absolute right of ownership arising from the expiration of the period within which to redeem the property.<sup>60</sup> (Citation omitted)

Hence, the issuance of a writ of possession is not limited only to the instances enumerated in cases such as *Jayag v. BDO Unibank, Inc.*,<sup>61</sup> *Spouses Reyes v. Spouses Chung*,<sup>62</sup> *Spouses Constantino v. Benitez*,<sup>63</sup> *De Guzman v. Chico*,<sup>64</sup> and *Sia v. Arcenas*.<sup>65</sup>

<sup>56</sup> *Rollo*, p. 59.

<sup>57</sup> *Jayag v. BDO Unibank, Inc.*, G.R. No. 222503, September 14, 2021 [Per C.J. Gesmundo, First Division], citing *Spouses Constantino v. Benitez*, G.R. No. 233507, February 10, 2021 [Per J. Carandang, First Division] and *Spouses Reyes v. Spouses Chung*, 818 Phil. 225, 235 (2017) [Per J. Velasco, Jr., Third Division]. (Citation omitted)

<sup>58</sup> *Jayag v. BDO Unibank, Inc.*, *id.*

<sup>59</sup> *De Guzman v. Chico*, 802 Phil. 515, 526 (2016) [Per J. Jardaleza, Third Division], citing *Spouses Arvizu v. Court of Appeals*, 498 Phil. 793 (2005) [Per J. Callejo, Sr., Second Division].

<sup>60</sup> *De Guzman v. Chico*, *id.* at 527.

<sup>61</sup> G.R. No. 222503, September 14, 2021 [Per C.J. Gesmundo, First Division].

<sup>62</sup> 818 Phil. 225, 235 (2017) [Per J. Velasco, Jr., Third Division].

<sup>63</sup> G.R. No. 233507 February 10, 2021 [Per J. Carandang, First Division].

<sup>64</sup> *Supra* note 58.

<sup>65</sup> 750 Phil. 923 (2015) [Per J. Perlas-Bernabe, First Division]



Nevertheless, the Petition filed by the heirs of Wenceslao, Jr. and Corazon is still improper.

It must be emphasized that a Petition for the issuance of a writ of possession is not an initiatory pleading. While it is denominated as a “petition,” it is, nonetheless, a motion.<sup>66</sup> In *De Guzman*, this Court explained that:

A motion is not an independent right or remedy, but is confined to incidental matters in the progress of a cause. *It relates to some question that is collateral to the main object of the action and is connected with and dependent upon the principal remedy.* An application for a writ of possession is *a mere incident in the registration proceeding.*<sup>67</sup> (Emphasis supplied and citation omitted)

In the present case, the Petition filed by the heirs of Wenceslao, Jr. and Corazon does not aim to initiate a new litigation that would classify it as an initiatory pleading. While no main or principal action was instituted for purposes of properly registering the transfer of title, it is clear that the Petition filed is a consequence of the purchase made by the predecessors-in-interest of the heirs of Wenceslao, Jr. and Corazon.

Further, although the principles enunciated in *De Guzman* are relevant and instructive in resolving the present case, the CA misconstrued a crucial fact that alters the application of *De Guzman*. Noticeably, in *De Guzman*, while it involved a prayer for the issuance of a writ of possession arising from a realty tax delinquency sale, the respondent in the said case filed with the RTC an application for a new certificate of title under Section 75,<sup>68</sup> in relation to Section 107<sup>69</sup> of Presidential Decree (P.D.) No. 1529.<sup>70</sup> In effect, the prayer

<sup>66</sup> *De Guzman v. Chico*, supra note 56, at 525, citing *Spouses Arquiza v. Court of Appeals*, 498 Phil. 793 (2005) [Per J. Callejo, Sr., Second Division].

<sup>67</sup> *Spouses Arquiza v. Court of Appeals*, id. at 802–803.

<sup>68</sup> PRESIDENTIAL DECREE NO. 1529, sec. 75 states:

SECTION 75. *Application for New Certificate Upon Expiration of Redemption Period.* — Upon the expiration of the time, if any, allowed by law for redemption after registered land has been sold on execution taken or sold for the enforcement of a lien of any description, except a mortgage lien, the purchaser at such sale or anyone claiming under him may petition the court for the entry of a new certificate of title to him.

Before the entry of a new certificate of title, the registered owner may pursue all legal and equitable remedies to impeach or annul such proceedings.

<sup>69</sup> PRESIDENTIAL DECREE NO. 1529, sec. 107 states:

SECTION 107. *Surrender of Withheld Duplicate Certificates.* — Where it is necessary to issue a new certificate of title pursuant to any involuntary instrument which divests the title of the registered owner against his consent or where a voluntary instrument cannot be registered by reason of the refusal or failure of the holder to surrender the owner's duplicate certificate of title, the party in interest may file a petition in court to compel surrender of the same to the Register of Deeds. The court, after hearing, may order the registered owner or any person withholding the duplicate certificate to surrender the same, and direct the entry of a new certificate or memorandum upon such surrender. If the person withholding the duplicate certificate is not amenable to the process of the court, or if for any reason the outstanding owner's duplicate certificate cannot be delivered, the court may order the annulment of the same as well as the issuance of a new certificate of title in lieu thereof. Such new certificate and all duplicates thereof shall contain a memorandum of the annulment of the outstanding duplicate.

<sup>70</sup> Otherwise known as the Property Registration Decree.

for the issuance of a writ of possession was only ancillary to the main action. It did not exist except only as a part or an incident of the primary or main action, which was the application for a new certificate of title under Section 75, in relation to Section 107 of P.D. No. 1529.

In a similar case, *Spouses Cloma v. Court of Appeals*,<sup>71</sup> the petitioners instituted an action seeking the cancellation of the titles issued in the name of the purchasers in the delinquency sale and sought the issuance of new titles in their favor pursuant to Section 75 of P.D. No. 1529.<sup>72</sup>

To stress, in *De Guzman* and *Spouses Cloma*, there were pending original actions before the trial court took cognizance of the petitions for the issuance of a writ of possession. Reconciling the nature of a petition for the issuance of a writ of possession as an incident in registration proceedings with the rulings in *De Guzman* and *Spouses Cloma*, this Court holds that though the issuance of a writ of possession arising from a realty tax delinquency sale is permitted, it presupposes the existence of a main or principal action instituted to consolidate the ownership of the subject property in favor of the purchaser. Without a main or principal action, the filing of a motion or petition for the issuance of a writ of possession is improper, as in this case.

The heirs of Wenceslao, Jr. and Corazon cannot simply invoke the ministerial duty of the court to issue a writ of possession to expedite and circumvent the legal processes available to them to assert their possessory and ownership rights. Contrary to the claim of the heirs of Wenceslao, Jr. and Corazon, the issuance of the writ of possession is improper as there exists a clear impediment in the case. The title has not been consolidated yet in their favor. As such, this Court is devoid of any authority to grant the issuance of a writ of possession.

While the remedies of the winning bidder are not outlined in the Local Government Code,<sup>73</sup> there are remedies available in the provisions of P.D. No.

<sup>71</sup> 304 Phil. 828 (1994) [Per J. Puno, Second Division].

<sup>72</sup> *Id.* at 834.

<sup>73</sup> REPUBLIC ACT NO. 7160, secs. 261 and 262, otherwise known as the Local Government Code, state:  
SECTION 261. *Redemption of Property Sold.*— Within one (1) year from the date of sale, the owner of the delinquent real property or person having legal interest therein, or his representative, shall have the right to redeem the property upon payment to the local treasurer of the amount of the delinquent tax, including the interest due thereon, and the expenses of sale from the date of delinquency to the date of sale, plus interest of not more than two percent (2%) per month on the purchase price from the date of sale to the date of redemption. Such payment shall invalidate the certificate of sale issued to the purchaser and the owner of the delinquent real property or person having legal interest therein shall be entitled to a certificate of redemption which shall be issued by the local treasurer or his deputy. From the date of sale until the expiration of the period of redemption, the delinquent real property shall remain in the possession of the owner or person having legal interest therein who shall be entitled to the income and other fruits thereof.  
The local treasurer or his deputy, upon receipt from the purchaser of the certificate of sale, shall forthwith return to the latter the entire amount paid by him plus interest of not more than two percent (2%) per month. Hereafter, the property shall be free from the lien of such delinquent tax, interest due thereon and expenses of sale.

1529, in relation to the Rules of Court, which must be read together with the Local Government Code. The heirs of Wenceslao, Jr. and Corazon have not yet undergone the processes and remedies available to them to support their claim of ownership and possession over the subject lot. At this stage of the proceedings, it would be improper to issue a writ of possession without consolidating title to the subject property through legal remedies available to the heirs of Wenceslao, Jr. and Corazon in the appropriate principal or main case.

The heirs of Wenceslao, Jr. and Corazon cannot simply seek possession of the subject property by filing a Petition for the issuance of a writ of execution alone. The need to consolidate the title to the property through the appropriate judicial process in accordance with provisions of P.D. No. 1529 is consistent with Articles 428 and 433 of the Civil Code which respectively state:

Art. 428. The owner has the right to enjoy and dispose of a thing, without other limitations than those established by law.

The owner has also a right of action against the holder and possessor of the thing in order to recover it.

Art. 433. Actual possession under claim of ownership raises disputable presumption of ownership. *The true owner must resort to judicial process for the recovery of the property.* (Emphasis supplied)

Considering that this Court cannot take cognizance of the present case due to the absence of a principal or main action on which the Petition for the issuance of a writ of possession is hinged, this Court shall refrain from discussing and ruling on the remaining arguments raised by the parties. Nonetheless, the ruling of this Court dismissing the case is without prejudice to the filing of an appropriate case in the proper court.

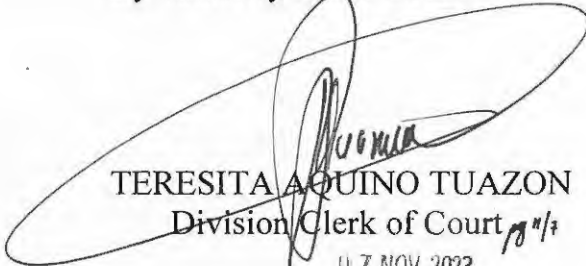
**FOR THESE REASONS**, the Petition for Review on *Certiorari* is **GRANTED**. The Decision and the Resolution of the Court of Appeals in CA-G.R. CV No. 06706 are **SET ASIDE**. The Petition for the issuance of a writ of possession instituted by the heirs of Wenceslao, Jr. and Corazon is **DISMISSED** without prejudice to the filing of the appropriate case in the proper court.

**SO ORDERED.”**

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SECTION 262. *Final Deed to Purchaser.* — In case the owner or person having legal interest therein fails to redeem the delinquent property as provided herein, the local treasurer shall execute a deed conveying to the purchaser said property, free from lien of the delinquent tax, interest due thereon and expenses of sale. The deed shall briefly state the proceedings upon which the validity of the sale rests.

By authority of the Court:

  
TERESITA AQUINO TUAZON  
Division Clerk of Court  
07 NOV 2023

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HON. PRESIDING JUDGE (reg)  
Regional Trial Court, Branch 12  
5700 San Jose, Antique  
(Civil Case No. 2014-03-3897)

COURT OF APPEALS (reg)  
Visayas Station  
Cebu City  
CA-G.R. CV No. 06706

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