

**REPUBLIC SURETY & INSURANCE COMPANY, INC., PETITIONER,
HON. RAMON R. SAN JOSE, AS PRESIDING JUDGE OF THE COURT OF
FIRST INSTANCE OF MANILA (BRANCH IV), MACARIO H. OFILADA,
AS SHE...**

G.R. No. L-8063. May 31, 1955

Ponente: REYES, A., J.

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REYES, A., J.:

This is a petition for a writ of mandamus commanding the respondent judge of first instance and the sheriff of Manila immediately to place petitioner in physical possession of certain real properties purchased by it at a foreclosure sale.

The essential facts are not in dispute as they appear in copies of court record attached to the pleadings. But after the case had been heard and pending decision on the merits, respondents filed an urgent ex-parte motion, dated January 14, 1955, praying that the sheriff of Manila be enjoined from (among other things) ejecting the respondents from the properties in question as a result of a final and executory judgment rendered by the municipal court of Manila in an ejection suit docketed therein as Civil Case No. 32496 and entitled "Republic Surety & Ins. Co, Inc., plaintiff, versus Eugenio S. de Gracia, Felina A, de Gracia, Estanislawa Valdres, Tirso Ramos, Filomena Lucena, and Margarita Ramirez, defendants," ordering the respondents to vacate the same premises involved in the present case, it being alleged as a ground for the motion that the execution of said judgment would be violative of certain resolutions rendered by this Court in the present case. Apprised by these allegations that when this case was filed in this Court on August 9, 1954, an action for ejection had already been commenced (on July 2, 1954) in the municipal court and that, on December 1st of that same year judgment was therein rendered, for the enforcement of which, after it had become final, a writ of execution was issued under date of January 4, 1955, this Court became aware that the present petition for mandamus had already become superfluous, since its objective, which is to place petitioner in possession of the properties in question, may likewise be attained thru the writ of execution issued by the municipal court. Consequently, this Court, in its resolution of March 29, 1955, required petitioner to show cause why the present case for mandamus should not be dismissed for being unnecessary. By way of return to the said order to show cause, petitioner, without denying the existence of final and executory judgment in the ejection or detainer case in the municipal court, pleads—

"3. That the issue in the said detainer case in the Municipal Court of Manila although involving the same real property relate chiefly to the fact of possession which can arise with or without extra-judicial foreclosure proceedings under act No. 3135, as amended;

"4. That the issue in this case is not the fact of possession but the authority of a superior court to issue a certain kind of order in pursuance of the law and the consequent duty of the sheriff of Manila to enforce such an order which are important for determination;

"5. That a decision on the merits in this case will once and for all decide whether or not the Court of First

Instance of Manila has the authority to issue such a writ of possession over the real property foreclosed under Act No. 3135 as amended and in the affirmative, whether or not the same writ can be enforced by the Sheriff of Manila for which reason a decision on the merits in this case shall be of far reaching importance and shall constitute a jurisprudence of great consequence in the sense that people will save a lot of money by being guided accordingly on what to do if and when they become purchasers for value of real properties foreclosed under act No. 3135 as amended."

We are not impressed by petitioner's reason for non-dismissal, it being manifest that the writ prayed for has become unnecessary because of a writ of execution on already issued in the municipal court, which, when, carried out, will necessarily bring about the ejectment of the respondents from the premises in question and place the petitioner in possession thereof.

Wherefore, the petition for mandamus is ordered dismissed. Without costs.

Pablo, Bengzon , Montemayor, Bautista Angelo, Labrador, Concepcion, and Reyes, J.B.L., JJ., concur.

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