

MANUEL RIVERA, PETITIONER, VS. THE COURT OF FIRST INSTANCE OF NUEVA ECIJA AND JACINTO RUPAC, RESPONDENTS.

G.R. No. 43057. February 25, 1935

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an original petition for mandamus filed by Manuel Rivera against the Court of First Instance of Nueva Ecija and Jacinto Rupac, praying, for the reasons therein stated, that judgment be rendered directing the said court to issue an order requiring the provincial sheriff of Nueva Ecija to place said Manuel Rivera in possession of the two parcels of land purchased by him at the public auction sale made by said provincial sheriff by virtue of the foreclosure of the mortgage.

The pertinent facts necessary for the resolution of the questions raised in this petition are as follows:

The herein petitioner Manuel Rivera brought civil case No. 6641 in the Court of First Instance of Nueva Ecija to foreclose a mortgage constituted in his favor by said Jacinto Rupac. On November 22, 1933, judgment was rendered in said case ordering the mortgagor, Jacinto Rupac, to pay to the mortgagee, Manuel Rivera, the sum of P700 with legal interest thereon and costs, within three months from said date, and directing, upon the defendant's failure to pay, the sale of the two parcels of land in question which, according to the certificate of sale, are not registered under the Torrens system. As the mortgagor failed to comply with the judgment, the provincial sheriff of Nueva Ecija, on July 30, 1934, sold said two parcels of land to Manuel Rivera, as the highest bidder, for the sum of P300.

On August 10, 1934, said mortgagee and purchaser, Manuel Rivera, filed a motion praying for the confirmation of the sale and the issuance of a writ of possession against the mortgagor, Jacinto Rupac.

In an order of August 31, 1934, the respondent Court of First Instance, then presided by Judge Sabino Padilla, confirmed said sale but refused to issue the writ of possession prayed for, believing that it had no jurisdiction to order the sheriff to place the mortgagee and purchaser in possession of said two parcels of land.

In a foreclosure suit, where no third person not a party thereto intervenes and the debtor continues in the possession of the real property mortgaged, a writ of possession is a necessary remedy to put an end to the litigation, inasmuch as section 257 of the Code of Civil Procedure provides that the confirmation of a sale by a judicial decree operates to divest all the parties to the action of their respective rights and vests them in the purchaser. According to this legal provision, it is the duty of the competent court to issue a writ so that the purchaser may be placed in the possession of the property which he purchased at the public auction sale and became his by virtue of the final decree confirming the sale.

For the foregoing considerations, we are of the opinion and so hold that the court which has jurisdiction over a foreclosure suit also has jurisdiction to issue a writ of possession in favor of the purchaser at public auction of the property mortgaged without the necessity of an independent action when the mortgagor continues in the

possession thereof after confirmation of the sale by final decree.

Wherefore, the remedy prayed for is granted and the judge presiding the Court of First Instance of Nueva Ecija is ordered to issue a writ addressed to the provincial sheriff of Nueva Ecija directing him to place the herein petitioner and purchaser at public auction, Mariano Rivera, in possession of the two parcels of land in question, with costs against the respondent Jacinto Rupac. So ordered.

Malcolm, Imperial, Butte, and Goddard, JJ., concur.

Writ granted.

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