

**TEOTIMO ALAURIN AND VISITACION MAGNO, PETITIONERS, VS.
HONORABLE JUDGE JOSE NEPOMUCENO, JUDGE OF THE COURT OF
FIRST INSTANCE OF ALBAY; CRESENCIANA ATUN AND LAMBERTO
ESQUIVEL, RE...***G.R. No. L-38826. June 27, 1975*

Ponente: BARREDO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/44d60406e211/>**BARREDO, J.:**

Petition for certiorari to set aside the order of respondent court in its Civil Case No. 4883, entitled Cresenciana Atun et al. vs. Teotimo Alaurin, et al., granting the writ of preliminary injunction prayed for therein by herein respondents against the execution of the final judgment of ejectment in favor of petitioners.

It appears that in the action of ejectment (Civil Case No. 990 of the City Court of Legaspi City), petitioners secured a judgment ordering respondents to vacate a parcel of land, with an area of 205 square meters situated in Legaspi Port, Legaspi City and known as Lot No. 57 of Plan MSI-V-11535-D of the Cadastral Survey of said city. In said ejectment case, respondents claimed prior and continued possession of the land in question, and with respect to Original Certificate of Title No. 28 of the Register of Deeds of Legaspi City[1] on which petitioners based their action, respondents alleged that the same was secured through fraud. Upon this decision being appealed to the Court of First Instance, the same was affirmed, the court holding that the evidence of prior possession in favor of petitioners was so strong that the action for annulment of petitioner's (Teotimo Alaurin) title (Civil Case No. 4602 filed by the Republic of the Philippines at the instance of respondents) was "only a mere weak attempt to annul an existing certificate of title in favor of which the presumption of law is clearly on its side." Eventually, this decision of the Court of First Instance was affirmed by the Court of Appeals, said appellate court holding that Civil Case No. 4602 is "a contingency which may not be taken into consideration in deciding the issue of who has prior possession." Respondents' attempt to have the case appealed to the Supreme Court did not prosper, and so, the ejectment decision became final and executory.

It is the writ of execution issued by the City Court of Legaspi City on the basis of the final judgment just mentioned that respondents have sought to enjoin in Civil Case No. 4883, alleging as a main cause of action that the ejectment decision itself is void for lack of jurisdiction, considering that the issue of the validity of petitioners' title which was squarely raised was not passed upon before the issue of possession. Of course, respondents also reiterated their claim of title over the land in dispute. Over the opposition of petitioners, respondent court issued the writ of preliminary injunction prayed for. Incidentally, it may be mentioned that on July 1, 1974, Civil Case No. 4602, the case filed by the Republic was dismissed, but the Court has not been informed as to whether or not the decision is already final.

At the hearing of this case, in order to avoid further complications should respondents be immediately ejected before their effort to have the issue of title finally determined, no matter how remote might be the possibility of an outcome thereof favorable to respondents, the Court inquired from the parties if there was any cogent impediment

to their awaiting at least the decision of the trial court in Civil Case No. 4883 and abiding by whatever action the said court might deem proper as to the preliminary injunction, after it renders its decision on the merits. Whereupon, the parties filed the following Joint Manifestation:

"The PARTIES, assisted by their respective counsel, unto the Honorable Supreme Court respectfully set forth:

"1. That during the hearing of the above-entitled case on November 25, 1974, the parties agreed to the suspension of the consideration of the petition for certiorari. Instead the parties agreed to have Civil Case No. 4883 entitled Cresenciana Atun, et. al. versus Teotimo Alaurin, et al, before the Court of First Instance of Albay, tried on the merits.

"2. That after a decision is rendered in Civil Case No. 4883, the winning party shall possess the land in litigation — that is, if the plaintiffs win (private respondents herein) they shall be entitled to the writ of preliminary injunction issued by the Court of First Instance of Albay, otherwise, plaintiffs shall immediately vacate the premises and the defendants (petitioners herein) restored to the possession to the land in litigation.

"3. That the parties pray that a directive be issued by the Honorable Supreme Court to Branch II, Court of First Instance of Albay (Branch I of the same Court where Civil Case No. 4883 was assigned for hearing has no presiding Judge) to expedite the trial of Civil Case No. 4883, preferably to hear and decide the case within ninety (90) days from notice.

WHEREFORE, the parties pray that the Honorable Supreme Court issue the corresponding resolution on this joint manifestation.

Legaspi City, for Manila, Philippines

December 2, 1974

(SGD.) CRESENCIANA ATUN

(SGD.) TEOTIMO ALAURIN

Respondent

Petitioner

(SGD.) LAMBERTO ESQUIVE

(SGD.) VISITACION MAGNO

Respondent

Petitioner

(SGD.) MOISES C. KALLOS

(SGD.) OTILIO SY BONGON

Counsel for Respondents

Counsel for Petitioners

KALLOS LAW OFFICE

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Legazpi City

Legazpi City"

(Pages 111-112, Record.)

WHEREFORE, the instant case is dismissed and the trial court is hereby ordered to expedite the trial of Civil Case No. 4883 above referred to and to try and decide the same within ninety (90) days from notice hereof. Branch I of the Court of First Instance of Albay to which said case pertains being presently without a presiding judge, it is ordered that the said case be transferred to Branch II and that the judge therein presiding comply with this decision. The parties are enjoined to observe the agreement embodied in their aforequoted joint manifestation.

No costs.

Fernando, Chairman, Antonio, Aquino, and Concepcion, Jr., JJ., concur.

[1] This title was based on a sales patent granted by the Director of Lands.

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