

**IRENEO (MIO) SALAC, MERCEDES OJASTRO, LEOPOLDO
TOLENTINO, AND BERNARDINO ESPERANZA, PETITIONERS, VS.
HONORABLE RICARDO TENSUAN, ETC., ADELUISA B. FRANCISCO,
MARRIED TO LINGKOD J...**

G.R. No. L-49436. March 17, 1982

Ponente: FERNANDEZ, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/506c41b1491b/>

FERNANDEZ, J.:

This is a special civil action for certiorari, prohibition and/or mandamus with preliminary injunction to annul and set aside the decision in Civil Case No. Q-12751 of the Court of First Instance of Rizal, Branch IV, Quezon City entitled "Adeluisa B. Francisco, et al., Plaintiffs versus Leopoldo Tolentino and Mio Salac, Defendants," for recovery of possession and damages and the subsequent orders of the trial court denying and/or dismissing the petitions for new trial as well as the petitions for relief from judgment.[1]

In January, 1969 the private respondent, Adeluisa B. Francisco, and her husband Lingkod Juani, Jr. filed a complaint for recovery of possession and damages against the petitioners Leopoldo Tolentino and Ireneo (Mio) Salac docketed as Civil Case No. Q-12751 seeking the following relief:

"WHEREFORE, it is respectfully prayed of this Honorable Court that judgment be rendered as follows:

"1. Declaring that the plaintiffs had a much better right than that of the defendants squatters to possess and occupy the premises in question;

"2. Ordering the defendants to immediately vacate the said premises and surrender possession thereof to the plaintiffs;

"3. Ordering the said defendants to pay to the plaintiffs:

"(a) The sum of P11,700.00 representing unpaid reasonable rentals for the use and occupancy of the premises in question from October 1965 up to December 1968, plus the sum of P300.00 a month thereafter until the time that the defendants or any other person or persons who may claim any right under them, actually and fully vacate the premises in question;

"(b) The sum of P5,000.00, as and by way of attorney's fees; and

"(c) The costs of this suit.

"Plaintiffs likewise pray for such other relief and remedy that may be just and equitable in the premises.

"Quezon City, January 15, 1969."[2]

The petitioner, Ireneo (Mio) Salac, alleged in his answer that he was an occupant of the house on the property in question by virtue of tolerance and permission of its owner, petitioner Mercedes Ojastro, who intervened alleging that she had constructed the house occupied by petitioner Ireneo Salac on the lot in question since 1948.

After several postponements obtained by the petitioners, the case was finally submitted for decision in June, 1978, after a period of five (5) years. Thereafter, the trial court rendered a decision dated September 12, 1978, the dispositive part of which reads:

"WHEREFORE, in view of all the foregoing, judgment is hereby rendered in favor of plaintiffs and against herein defendants and intervenor, and:

"(a) Defendants and intervenor as well as persons claiming under them, are ordered to yield possession of Lot 21, Block E-148 as covered by and described in Transfer Certificate of Title No. 97561 of the Registry of Deeds for Quezon City, to herein plaintiffs;

"(b) Orders defendants and intervenor, jointly and severally, to pay plaintiffs the sum of P300.00 a month from date of filing of the complaint until they actually vacate the premises, as and by way of reasonable rental for their occupancy thereto;

"(c) Orders defendants and intervenor jointly and severally to pay plaintiffs the sum of P5,000.00 as and by way of attorney's fees; and

"(d) Orders defendants and intervenor to pay the Costs of suit.

"The counterclaim filed by defendants and the intervenor, respectively, are hereby dismissed for lack of merit.

"SO ORDERED.

"Quezon City, Metro Manila, Philippines, September 12, 1978.

"(SGD) RICARDO P TENSUAN [3]

On November 3, 1978, the defendant Mio Salac and intervenor Mercedes Ojastro filed a motion for new trial wherein it was prayed that the decision in the case be set aside.

On November 16, 1978, the defendant Mio Salac and intervenor Mercedes Ojastro filed a manifestation and motion wherein they admitted that the motion for new trial dated November 3, 1978 was filed one (1) day beyond the reglementary period, and they moved that said motion be treated and considered as a petition for relief from judgment under Rule 38 of the Revised Rules of Court.[4]

On November 22, 1978 Leopoldo Tolentino filed a petition for relief from judgment based on the same grounds alleged in the motion for new trial filed by Mio Salac and Mercedes Ojastro.

The trial court, although holding that the petitions for relief were filed within the reglementary period as provided in Section 3 of Rule 38 of the Revised Rules of Court, denied both petitions for the following reasons:

"The Court notes that the grounds alleged by the petitioners in their petition for Relief are basically the enumerated grounds for a Motion for New Trial under Rule 37 of the Revised Rules of Court, particularly, a supposed 'newly discovered evidence.'

"Under the provisions of Section 2 of Rule 38 of the Revised Rules of Court, the only allowable grounds for a petition for relief are fraud, accident, mistake or excusable negligence. Newly discovered evidence is not a ground for a petition for relief.

"Again, under the provisions of Section 3 of Rule 30, 'a petition for relief must be verified and must be accompanied by affidavits showing the fraud, accident, mistake or excusable negligence relied upon, and the facts constituting the petitioner's good and substantial cause of action or defense, as the case may be.' (Underscoring supplied)

"A cursory perusal of the supposed affidavits of merit attached to the two petitions shows that:

"a) No facts have been alleged which show clearly the fraud, accident, mistake or excusable negligence (the only basic allowable grounds for a petition of this nature) relied upon by petitioner,

"and,

"b) The facts supposedly constituting the petitioners' 'good and substantial xxx defense xxx' relate principally to a 'newly discovered evidence,' which, the Court believes, is not admissible, considering that same is sought to be presented on an issue which has never been raised in the pleadings, and is a defense that has already been deemed waived. (Section 2, Rule 9, Revised Rules of Court)."[5]

Bernardino Esperanza, although not a party in the trial court, joined the petitioners alleging that he owns a house of semi-strong materials constructed in a portion of the lot in question.

The petitioners submit that the respondent judge committed the following errors:

FIRST : THE RESPONDENT JUDGE ERRED IN DISMISSING THE PETITIONS FOR RELIEF FROM JUDGMENT AND COMMITTED A MISAPPLICATION OF THE DOCTRINE IN THE CASE OF KEMPIS VS. GONZALES, 60 SCRA 439, INASMUCH AS AN AWARD OF A PHHC LOT IS NOT IN ITSELF A CONTRACT OF SALE, THE SAME STILL BEING SUBJECT TO REVOCATION IN CASE THE APPLICANT IS FOUND LATER NOT TO POSSESS THE NECESSARY QUALIFICATIONS; AND

SECOND : THE RESPONDENT COURT COMMITTED A GRAVE ABUSE OF DISCRETION BY DISMISSING OUTRIGHT AND IMPROVIDENTLY THE PETITIONS FOR RELIEF FROM JUDGMENT.[6]

For a better understanding of the issues raised in the petition, it is pertinent to quote the following facts found by the trial court:

"The plaintiffs' evidence above set forth is not merely clear and straight-forward; but is additionally supported by documentary evidence on record that Lot 21, Block E-148 in question was applied for by Melecio Cipriano on January 31, 1957 (Exh. "12"), for which the requisite down payment was paid by him (Exh. "13"). A Conditional Contract to Sell the said lot was executed jointly by the PHHC and Melecio Cipriano (Exhibit "31"), and the latter later applied to transfer his rights there-to to plaintiff Adeluisa Francisco (Exhs. "18" and "19"). Said application was approved and the pertinent transfer fee was duly paid by Melecio Cipriano (Exh. "32") and by Adeluisa Francisco (Exh. "33"), and the Deed of Transfer of Rights was effected thereafter (Exh. "34"). In due course, the PHHC executed a Deed of Sale over the disputed lot in favor of plaintiff Adeluisa Francisco (Exhs. "35" and "36"), whereupon said plaintiff was issued the covering certificate of title therefor (Exhibit "A").

"It is not disputed that defendant Leopoldo Tolentino has a house on the disputed lot, however, in the testimony of the defendant Tolentino, he negates that the intervenor Mercedes Ojastro has likewise a house on the premises in question. Material in this regard would be testimony by plaintiff Adeluisa Francisco that it was only after her purchase of rights from Melecio Cipriano that she became aware of the occupancy of the lot in question, as well as the claim of defendant Mio Salac of occupancy thereof by Mercedes Ojastro since 1948. Likewise material would be the recitals of an inspection report taken in 1960 (Exh. "20") at which time it would appear that defendant Leopoldo Tolentino was already in occupancy of the disputed lot in part.

"The claims made on behalf both of defendant Leopoldo Tolentino of occupancy since 1945 and of Mercedes Ojastro of occupancy since 1948, is certainly not fortified by listed occupants in a plan drawn up in 1957 (Exh. "2"). Records do establish that Lot 21, Block E-148 was applied for by Melecio Cipriano in 1957 (Exhibit "12") and a 10% down payment was made by him therefor in the same year (Exh. "13"). On the other hand, neither defendant Leopoldo Tolentino nor intervenor Mercedes Ojastro can show a prior or contemporary application for the portions of the lots respectively occupied by them, nor are said persons financially qualified, no formal application or adverse claim on the lot had been made on the lot awarded to

Melecio Cipriano (Exh. "26") until after the transfer of rights from Melecio Cipriano to plaintiff Adeluisa Francisco had already been effected, in that complaint filed by Mercedes Ojastro in mid-1961 (Exh. 1"). Assuming further that either defendant Leopoldo Tolentino or intervenor Mercedes Ojastro had been on the disputed lot awarded to Melecio Cipriano in 1957, pertinent PHHC records disclose that the squatter in the said lot is not registered in the PHHC census and neither has filed an adverse claim for the lot (Exh. "26"). Finally, the merits of the claims filed on behalf of defendant Tolentino and intervenor Ojastro have already been passed upon and ruled in favor of the awardee, and the appeal therefrom resolved against the said defendant and intervenor, such that they were advised thereof as far back as 1961 in the case of Mercedes Ojastro (Exh. "38") and 1962 in the case of Leopoldo Tolentino (Exh. "40").

"Under the theory of the exhaustion of administrative remedies pursued by herein defendants with the PHHC, i.e., to annul the award to the transferor and the plaintiff herein by the latter office, there being no showing of irregularities, defect or denial of due process in the said administrative proceedings, despite denial of said administrative action to annul said award filed by the said defendants, without appeal in accordance with law to higher authorities, the resolution denying the annulment of the award in question, acquired finality, which this Court is bound to uphold.

"The Court can perceive no palpable irregularity in the award of the disputed lot to Melecio Cipriano. The mass of the evidence preponderates clearly in favor of plaintiffs and against defendants. Plaintiff Adeluisa Francisco is entitled in law to exercise ownership rights over the lot covered by and described in Transfer Certificate of Title No. 97561, and to recover possession thereof from its occupants." [7]

From the facts found by the trial court, it is clear that the decision is supported by substantial and convincing evidence.

The trial court did not commit any error in dismissing outright the petitions for relief.

Section 4, Rule 38, Revised Rules of Court provides:

"Order to file an answer. - If the petition is sufficient in form and substance to justify relief, the court in which it is filed, or a judge thereof, shall issue an order requiring those against whom the petition is filed to answer the same within fifteen (15) days from the receipt thereof, which order shall be served in such manner as the court may direct, together with copies of the petition."

It is clear from the foregoing provision that the judge shall issue an order requiring those against whom the petition is filed to answer only when "the petition is sufficient in form and substance to justify relief x x x."

As explained in the order denying the petitions for relief, no facts had been alleged which show clearly the fraud, accident, mistake or excusable negligence and that the facts supposedly constituting the petitioners' good and substantial defense relate principally to a newly discovered evidence, which, the trial court believed, is not admissible, considering that the same is sought to be presented on an issue which has never been raised in the pleadings, and is a defense that has already been deemed waived.

The petitioners rely heavily on the doctrine laid down in the case of *Kempis vs. Gonzales*, 60 SCRA, 439. Said case is not applicable to the instant case.

In *Kempis vs. Gonzales*, the action was for specific performance filed by Guillermo Gonzales against the People's Homesite and Housing Corporation to execute the necessary contract of sale. The issue was whether the PHHC should execute a contract of sale in favor of Guillermo Gonzales or Sergio Kempis and Zorahayda Kempis.

The instant case is for recovery of possession of registered land. A contract of sale had already been executed by the PHHC in favor of the plaintiff, private respondent herein, Adeluisa B. Francisco. In fact, Transfer Certificate No. 97561 has been issued in the name of Adeluisa B. Francisco covering the lot in question on September 23,

1965 by the Registry of Deeds in Quezon City.[8] Moreover, the PHHC is not a party either in the trial court or before this Court.

In view of the foregoing, the ruling laid down in *Kempis vs. Gonzales* is not applicable to this case.

The petitioners allege that this is a petition filed under Rule 65 of the Revised Rules of Court. There is no showing that the respondent judge committed a grave abuse of discretion or exceeded his jurisdiction or failed to perform a duty arising from his office. Hence the petition for certiorari, prohibition and mandamus does not lie.

WHEREFORE, the petition is hereby dismissed and the decision and orders rendered in Civil Case No. Q--12751 sought to be set aside are affirmed, without pronouncement as to costs.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Guerrero, Melencio-Herrera, and Plana, JJ., concur.

[1] Rollo, pp. 2-21.

[2] Rollo, pp. 24-25.

[3] Rollo, pp. 72-73.

[4] Rollo, p. 184.

[5] Rollo, pp. 184-185.

[6] Petition, Rollo, p. 14 and pp. 16-17.

[7] Rollo, pp. 71-72.

[8] Rollo, p. 217.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.