

**NONATO BARROSO, PETITIONER, VS. HON. CASTRENSE C. VELOSO,
AS JUDGE OF THE COURT OF FIRST INSTANCE OF SAMAR (BRANCH
II), AND ESTRELLA BAR ROZO, RESPONDENTS.**

G.R. No. L-26544. July 22, 1975

Ponente: CASTRO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/5b6d3348bee5/>

CASTRO, J.:

From the denial of his motion to dismiss the complaint lodged against him and a certain Clotilde Cultura by Estrella Barrozo, in civil case 1393 of the Court of First Instance of Samar (Branch II), the petitioner Nonato Barroso comes to this Court on a special civil action for certiorari.

On June 20, 1953 Estrella Barrozo brought an action against Clotilde Cultura, Marta Alconaba and Federico Beato in the Court of First Instance of Samar, docketed as civil case 688, for recovery of a parcel of land of 347 square meters situated in Borongan, Samar. Nonato Barroso was subsequently allowed by the trial court to intervene in the case upon his claim that the land in dispute is owned in common by Estrella Barrozo, Clotilde Cultura and himself but that the former two had separately acted to dispose of the property by themselves.

When the case was called for hearing on May 29, 1956, Estrella Barrozo failed to appear and, as a result, the trial court dismissed the action, thus:

"Upon petition of the defendants and the intervenor on the ground that the plaintiff notwithstanding the notification sent to her by registered mail for the trial of this case today, she failed to appear, the complaint is hereby dismissed with costs. The intervenor in view of the failure of the plaintiff to appear for the trial of this case asked for the dismissal of this case his intervention, which petition is hereby granted."

Estrella Barrozo's motion for reconsideration of this order of dismissal was denied by the trial court on the ground that it was neither verified nor accompanied by an affidavit of merit. No further proceeding took place in this case.

In July of 1960 Estrella Barrozo commenced an action for forcible entry against Nonato Barroso involving the same lot subject of civil case 688. This action was, however, dismissed by the municipal court of Borongan, Samar, and, on appeal, by the Court of First Instance of Samar, on the ground that ownership rather than mere possession was in issue.

On October 11, 1965 Estrella Barrozo filed the case subject of this petition (civil case 1393) against Nonato Barroso and Clotilde Cultura for recovery of the same lot subject of her two previous actions. In her complaint Estrella Barrozo alleges in substance that she bought the land in question from one Ignacia Belizar on June 2, 1952; that the said Ignacia Belizar had earlier (on February 14, 1952) acquired the property from Clotilde Cultura by barter agreement; that notwithstanding her earlier disposition of the property, Clotilde Cultura on April 5, 1960 once again bartered the same lot to Nonato Barroso; and that the latter refused to surrender possession thereof to the plaintiff.

On March 8, 1966 Nonato Barroso moved to dismiss the complaint on the ground, among others, that the same is barred by the final judgment of dismissal rendered in civil case 688. This motion and a subsequent motion for reconsideration were denied.

Hence the present petition for certiorari.

Pending resolution of this case, Nonato Barroso moved to dismiss his petition without prejudice, with reservation of the right to raise the issues involved in this case in some future proceeding. Asked for comment, Estrella Barroso stated that she interposes no objection to the dismissal, but submits that since she has already filed her answer to the petition as well as her memorandum in support thereof, "the dismissal sought by the Petitioner could be a dismissal on the merits." And before this Court could act on the petitioner's motion, the petitioner withdrew the same in a rejoinder dated May 24, 1972, and asked that this case be decided on the merits. This we shall now proceed to do.

Were we to assume, without holding, that the dismissal of the complaint in civil case 688 is with prejudice, amounting to a dismissal on the merits, the effect would be that the causes of action of Estrella Barroso have failed and she is now barred from pursuing them in any subsequent proceeding. We note, however, from the complaint filed in civil case 688 that Estrella Barroso did not aver any cause of action against Nonato Barroso. The latter was allowed to intervene in that case, not for the purpose of joining in the interest of any of the defendants therein, but to enable him to ventilate his altogether independent claim upon the property in dispute. The result is that the dismissal of the complaint of Estrella Barroso could not have been a pronouncement on whatever cause or causes of action she might have against Nonato Barroso. The plea of *res adjudicata* is, therefore, not available to the latter. Moreover, Nonato Barroso's own causes of action against Estrella Barroso which he pleaded in his intervention were themselves dismissed at the instance of Nonato Barroso himself without any pronouncement from the trial court on their merits. Nonato Barroso cannot thus interpose bar of prior judgment in his favor in relation to the present case.

Besides, we note from Nonato Barroso's motion for intervention that he claims that the property belongs in common to Estrella Barroso, one Clotilde Cultura and himself. If this were true, it is in the interest of Nonato Barroso and the co-ownership — considering the mutual resentments occasioned by the various litigations among them and there appearing to be no legal impediment to such a course — that the property is finally partitioned. On the other hand, if the claim of Estrella Barroso that the property belongs to her alone is correct, the decision in civil case 1393 could settle the issue of ownership once and for all.

ACCORDINGLY, the instant petition is denied. No pronouncement as to costs.

Makasiar, Esguerra, Muñoz Palma, and Martin, JJ., concur.

Teehankee, J., is on leave.

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.