

**ROSARIO ARIVE, IN HER BEHALF AND AS GUARDIAN AD LITEM OF  
THE MINOR CRISTINA ZOLETA, PETITIONER, VS. FILOMENO B.  
YBAÑEZ, AS JUDGE OF THE COURT OF FIRST INSTANCE OF LAGUNA,  
FLOREN...**

*G.R. No. L-4809. November 19, 1952*

Ponente: PADILLA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/81d1b312a056/>

---

**PADILLA, J.:**

Rosario Arive is the second wife of the late Antonio Zoleta. Cristina Zoleta is the only daughter by that marriage. Antonio Zoleta, and Flaviana Espinosa were married on 18 July 1901. She died intestate and without issue and legitimate ascendants. During their married life they acquired six parcels of land described in the complaint for partition filed by the lawful heirs of the late Flaviana Espinosa against Cristina Zoleta (civil case No. 9319 of the Court of First Instance of Laguna). Upon a stipulation of facts the Court of First Instance of Laguna rendered judgment finding the six parcels of land described in the complaint to be conjugal property of the late Antonio Zoleta and Flaviana Espinosa, one-half of which belongs to the only daughter of the late; Antonio Zoleta and the other half to the heirs of the late Flaviana Espinosa; ordering the partition of the parcels of land between the plaintiffs and the defendant and the latter to pay to the former the sum of P1,000, the value of one-half of the products harvested in the six parcels of land belonging to the heirs of the late Flaviana Espinosa, the minors Juana Josefa and Pilar surnamed Espinosa represented, by Florencio Crisostomo, their guardian ad litem, from 1940, the year Rosario Arive, the widow of the late Antonio Zoleta, took possession of the six parcels of land to 1949, when the action for partition was brought, together with lawful interest, and the sum of P100 every year thereafter from 1950 until after partition thereof shall have been made, and costs. On 13 February 1951 Rosario Arive was notified of the judgment and two days later, or on 15, she filed a notice of appeal but failed to perfect it. On 3 April 1951 the plaintiffs prayed for a writ of execution as to that part of the judgment directing the defendant to them the sum of P1,000, together with lawful interests an additional sum of P100 yearly from 1950 until after partition shall have been actually carried out and costs. This was granted. A motion for reconsideration was denied. This petition is for a writ of certiorari and preliminary injunction filed by the defeated party in the court below.

It is contended by the petitioner that the judgment not having become final a writ of execution could not be issued. On the other hand, it is claimed by the respondents that no appeal having been taken the judgment rendered on 29 December 1950 became final and executory.

No appeal having been perfected within the reglementary period the judgment referred to became final and executory. A part of a judgment which needs no further proceedings, such as the payment of a sum of money awarded by the court as damages may be executed after the judgment had become final and executory. Further proceedings such as the appointment of commissioners to carry out the partition, if the parties cannot agree on the division of the parcels of land held in common, may be had without prejudice to the execution of that part of the judgment which needs no further proceedings.

The petition for a writ of certiorari is denied and the writ of preliminary injunction heretofore issued dissolved, with costs against the petitioner.

Paras, C. J., Pablo, Bengzon, Tuason, Montemayor, Jugo, Bautista Angelo, and Labrador, JJ., concur.  
Feria, and Reyes, JJ., took no part.

**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.