

**CIRIACO MERCADO, TEODORA VENTOLINA, SULPICIO CABRAL, IN
HIS OWN BEHALF AND AS GUARDIAN AD LITEM OF HIS MINOR
CHILDREN, HERMOGENES BAGNES, AND JULIANA SALCEDO,
PETITIONERS, VS. G...**

G.R. No. L-1693. February 09, 1948

Ponente: MORAN, C.J.

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MORAN, C.J.:

On March 30, 1944, the Court of appeals rendered judgment in Civil Case No. 4402 of the Court of First Instance of Quezon, compelling defendants, now petitioners, to execute a deed of sale on the litigated land within the period of six months in favor of plaintiffs, now respondents, in consideration of the amount of P1,150.00 which had been deposited twice in court, first in 1942, and second, in 1944. This judgment became final and executory, and a writ of execution was issued. Defendants, however, refused to execute the deed of sale "because of the usufructuary rights belonging to Sulpicio Cabral, one of the petitioners, which were not excluded therefrom. Upon the other hand, such exclusion could not be done for it would be an amendment to the final judgment rendered by the Court of Appeals. In view of this refusal of defendants, the Court, on motion, issued a writ of possession against them in favor of plaintiffs. But defendants asked for the appointment of a receiver to take charge of the property and its fruits, motion which was granted by the Court. It appears, however, that the receiver never succeeded in getting possession of the property and its fruits because of defendants' refusal. A motion for contempt was filed and after hearing, the Court issued an order compelling defendants to execute within ten days a deed of sale upon payment by plaintiffs of the sum of P1,150.00, and to deliver the property and its fruits to the receiver. Plaintiffs, now respondents, deposited again in court the amount of P1,150.00 on July 24, 1947, and the property and its fruits were surrendered by defendants, now petitioners, to the receiver. But, petitioners filed a notice of appeal against the last order of the Court, and the record on appeal is now pending approval.

Therefore, there being an appeal interposed by petitioners, no writ of certiorari may be considered. The case is dismissed, the costs to be paid by petitioners.

Feria, Pablo, Bengzon, and Padilla, JJ., concur.

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