

**PAULA VDA. DE DENOSO, GREGORIO DENOSO, ARACELI DENOSO
MALATBALAT, ASSISTED BY HER HUSBAND, PERFECTO
MALATBALAT, AND NICANOR DENOSO, PETITIONERS, VS. THE
COURT OF APPEALS, HON. H...**

G.R. No. L-32141. July 29, 1988

Ponente: GANCAYCO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/87d20b5a0056/>

GANCAYCO, J.:

In the herein petition for certiorari, it appears that petitioner filed an action for the recovery of their former homestead land from private respondents on June 25, 1965 in the Court of First Instance of Rizal which was docketed as Civil Case No. 8786. After pre-trial proceedings and the stipulation of facts, a decision was rendered on December 28, 1968 dismissing the complaint with costs against petitioners, a copy of which decision was received by petitioners on February 6, 1969. On February 25, 1969, petitioners filed a motion for reconsideration and/or to re-open the trial for the introduction of additional evidence to which an opposition was filed by private respondents with a counter-petition for execution of costs. The motion was denied in an order of April 19, 1969. The notice of appeal was filed by petitioners on May 27, 1969 while the cash appeal bond and record on appeal were filed on May 31, 1969. A motion to appeal as pauper was also filed by petitioners on June 2, 1969.

However, on June 10, 1969, private respondents filed a motion for reconsideration of said order in-so-far as it did not order the issuance of a writ of execution. Acting upon the motion the lower court ordered the issuance of a writ of execution for the costs in the amount of P35.00 on July 30, 1969. Said writ of execution was issued directed to the ex-officio Sheriff of Manila against petitioners. Thus, petitioners were levied P10.00.

On September 10, 1969, petitioners filed a petition for certiorari with preliminary injunction in this Court docketed as G.R. No. L-30929. In a resolution of September 15, 1969, the petition was referred to the appellate court where it was docketed as CA-G.R. No. 43963-R. On October 3, 1969, the appellate court dismissed the petition for failure of petitioners to comply with the provisions of Section 1, last paragraph, Rule 65 of the Rules of Court requiring the submission of certified copies of pertinent pleadings and orders. A copy of this resolution was received by petitioners on October 6, 1969. On October 17, 1969, petitioners moved to reconsider said resolution thereby submitting a copy of the motion for reconsideration, etc. which was not attached to the original petition, but this was denied in a resolution of October 29, 1969, a copy of which was received by petitioners on November 4, 1969.

Petitioners then elevated the matter to this Court by way of a petition for certiorari which was docketed as G.R. No. L-31221 on November 15, 1969. The petition was denied in a resolution of November 19, 1969, copy of which was received by petitioners on December 18, 1969.

Again, petitioners filed a petition for certiorari with the appellate court on January 2, 1970, docketed as CA-G.R. No. 44470. It is of the same nature as the first petition that they filed except that the pertinent pleadings and orders were now attached to the petition, involving the same parties and subject matter. In a resolution of February 6,

1970, the appellate court dismissed the petition on the ground that it was in effect a second motion for reconsideration of the resolution dismissing the petition in CA-G.R. No. 43963-R that had become final and executory on November 13, 1969, and that it is barred by res judicata. Acting on the motion for reconsideration thereof filed by petitioners, the appellate court denied the motion on March 11, 1970, a copy of which was received by petitioners on June 11, 1970.

On June 26, 1970, petitioners once again filed with this Court another petition questioning the dismissal by the appellate court of their petition in CA-G.R. No. 44470 on the following grounds:

"1.

THE HON. COURT OF APPEALS ERRED IN HOLDING THAT PETITIONERS' PETITION FOR CERTIORARI WITH WRIT OF PRELIMINARY INJUNCTION IS BARRED BY RES JUDICATA, AND DISMISSING THE PETITION ON SAID GROUND; and

"2.

THE HON. COURT OF APPEALS ERRED IN HOLDING THAT ITS RESOLUTION OF OCT. 3, 1969, IN CA-G.R. NO. 43963-R BECAME FINAL AND EXECUTORY ON NOV. 13, 1969, AND LIKEWISE DISMISSING THE PETITION ON SAID GROUND." (pp. 6-7, Rollo)

The petition is devoid of merit. The appellate court, in dismissing the petition, rendered an extended resolution as follows:

"Originally assigned to the Fourth Division, this petition for certiorari was referred to us because said Division considered the same 'as in the nature of a second motion for reconsideration' of our resolution promulgated October 3, 1969, dismissing the petition in CA-G.R. No. 43963-R.

"As correctly observed by the Fourth Division in its resolution of January 8, 1970, except for some minor details which do not change at all the basic issues, the petition in said case (CA-G.R. No. 43963-R) is the same as the petition now before us. And as already mentioned, the petition in CA-G.R. No. 43963-R was dismissed pursuant to our resolution of October 3, 1969, copy of which was received by the petitioners, thru counsel, on October 6, 1969.

"Examining the record of CA-G.R. No. 43962-R, it appears that on October 17, 1969, the petitioners filed a motion for reconsideration of our resolution of October 3, 1969, attaching thereto the pertinent pleadings which they failed to attach to the original petition, including the motion for reconsideration which the respondent Judge considered as pro forma. This motion was denied on October 29, 1969, and a copy of the resolution denying the same was received by the petitioners, thru counsel, on November 4, 1969.

"Thereafter, the petitioners did nothing until the filing of the instant petition on January 2, 1970. The petition was assigned to the Fourth Division which, after treating the same as a second motion for reconsideration of our resolution dismissing the petition in CA-G.R. 43963-R, has referred it to us for such action as we deem proper to take in the premises.

"It should be noted, however, that our resolution of October 3, 1969, in CA-G.R. No. 43963-R became final and executory on November 13, 1969. Although no entry of judgment has as yet been made, we believe that this Court can no longer entertain a second motion for reconsideration. And this, obviously, is the reason why the petitioners filed this second petition which, considered as a second motion for reconsideration of our resolution of October 3, 1969, in CA-G.R. No. 43963-R, was out of time, it having been filed only on January 2, 1970, or fifty (50) days after the resolution sought to be reconsidered had become final and executory. But even if the second petition be treated as an original petition as intended, we believe and so hold that the same is

barred by res judicata.

"WHEREFORE, the petition now under consideration should be, as it is hereby, dismissed.

"The Clerk of Court is hereby ordered to explain in writing within seventy-two (72) hours from receipt hereof, why no entry has as yet been made of our resolution of October 3, 1969, dismissing the petition in CA-G.R. No. 43963-R."

We agree. The action of petitioners is now barred by res judicata.

Petitioners, however, argue that the dismissal of their original petition in CA-G.R. No. 43963-R was due to a technicality in failing to attach the required documents to the petition and that it not being a judgment on the merits, res judicata cannot set in.[1]

Section 3, Rule 17 of the Rules of Court provides as follows:

"Sec. 3. Failure to prosecute. – If plaintiff fails to appear at the time of the trial, or to prosecute his action for an unreasonable length of time, or to comply with these rules or any order of the court, the action may be dismissed upon motion of the defendant or upon the court's own motion. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise provided by court."*

No doubt in this case the dismissal of the petition was because of the failure of petitioners to comply with the rules requiring the pertinent pleadings to be attached to the petition. Such a dismissal is in effect an adjudication upon the merits, unless otherwise provided for by the court concerned. In the resolution of dismissal by the appellate court, there is no qualification that it is without prejudice to petitioners prosecuting the case anew. Thus, the dismissal is and must be considered an adjudication on the merits.

Moreover, the petition involves the review of a decision of the lower court dismissing the complaint filed by petitioners on the merits. When the petition was filed with the appellate court then and eventually it was dismissed, it thereby effectively resulted in the affirmation of the judgment of the lower court.

There should be an end to litigation. This is the second time the same issue was elevated to this Court by the same parties for the same purpose. While the zeal of petitioners to pursue their claim however futile is admirable, there is and should be a limit to the same. A petition for review by certiorari under Rule 45 of the Rules of Court of a decision of the Court of Appeals is addressed to the sound judicial discretion of this Court. It is not a matter of right. In the present case its denial is certainly in order.

Indeed, private respondents correctly assert that the petition has become moot and academic as they have partially satisfied the decision from which they were attempting to appeal by paying P10.00 of the total cost of P35.00 which was enforced by the writ of execution. A party who voluntarily executes a judgment either partially or in toto is not permitted to appeal from it.[2]

WHEREFORE, the petition is DENIED with costs against petitioners.

SO ORDERED.

Narvasa, Cruz, Griño-Aquino, and Medialdea, JJ., concur.

[1] Citing *Alejandrino v. Cardona*, 70 Phil. 281; *Solano v. Salvilla*, 29 Phil. 166; *Lapid v. Lawan, et al.*, G.R. L-10686, May 31, 1957; and *Aguilar v. Gamboa*, G.R. L-10137, March 25, 1958.

[*] As a general rule, the rules in ordinary civil actions also applies to special civil actions.

[2] Desbarats v. De Vera, 46 O.G. 4936; Verches vs. Rios, 48 Phil. 16.

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.