

JESUS O. TUAZON AND LUZ P. TUAZON, PETITIONERS, VS. THE HONORABLE CONRADO M. MOLINA, JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA AND JOSEPH ROQUE, RESPONDENTS.

G.R. No. L-55697. February 26, 1981

Ponente: FERNANDEZ, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/9d26101aa93e/>

FERNANDEZ, J.:

This is a petition for certiorari seeking the following relief:

"WHEREFORE, Petitioners respectfully pray this Honorable Supreme Court:

"1. For the issuance of an Order requiring the Clerk of Court of the Court of First Instance of the City of Manila to certify to this Honorable Court a copy of the Order of October 29, 1980, issued in Civil Case No. 95668 between your Petitioners and respondent Joseph Roque, and of the Order denying the former's Motion for Reconsideration, that the same may be reviewed by the Court;

"2. That the Honorable Conrado M. Molina and his agents/representatives, the City Sheriff of Manila, be ordered to refrain from further proceeding in the matter here sought to be reviewed until further order of this Court;

"3. That after hearing the parties, a judgment be rendered declaring the Order of October 29, 1980 and the resulting Writ of Execution, to be null and void, and conceding to the Petitioners such further and other reliefs and remedies in the opinion of the Court they are justly and equitably entitled, with costs.

"Manila, December 15, 1980."[1]

The petition alleges that a decision dated January 31, 1979 was rendered by the respondent judge, Hon. Conrado M. Molina, in Civil Case No. 95668 of the Court of First Instance of Manila where the petitioners were among the defendants and the respondent, Joseph Roque, the plaintiff therein; that the decision was being served to the office of the petitioners' counsel on March 9, 1979 but because the said counsel was out of the country and in view of the refusal of the person in the office to receive the copy of the decision, the serving officer asked that the fact that counsel was abroad be noted on the face of the notice of decision; that the serving officer did not leave a copy of the decision at the office of petitioner's counsel but intimated that he would come back at the expected date of arrival of said counsel to serve his copy; that the afore-said serving officer never went back to the office of petitioners' counsel to deliver a copy of the decision; that the serving officer did not serve a copy of the decision to the petitioners themselves; that on August 18, 1980 the counsel of the respondent Joseph Roque filed a motion for execution of the decision; that on August 20, 1980 the petitioners filed an opposition to the motion for execution, contending that since they have never been served with a copy of the decision either personally or through their counsel, the said decision can never attain finality and cannot be the object of a motion for execution; that on September 4, 1980, the respondent Joseph Roque filed a reply to the opposition; that on September 24, 1980 the petitioners filed a rejoinder to the plaintiff's reply; that on October 29, 1980 the respondent judge issued an order granting the motion for execution of the decision; that on November 17, 1980

the petitioners filed a motion for reconsideration of the order granting the motion for execution; that unknown to the petitioners even as of October 29, 1980 a writ of execution was issued in the case; that pursuant to the aforesaid writ of execution the City Sheriff of Manila through his deputies actually made levies on both personal and real properties of the petitioners; that moreover on December 12, 1980 the City Sheriff of Manila, through his deputies, served the petitioners with a notice of auction scheduled to take place on December, 19, 1980 covering the properties levied upon; and that also on December 12, 1980 the petitioners' motion for reconsideration of the order dated October 29, 1980 was resolved belatedly and adversely by the respondent judge.[2]

Upon being ordered to comment, the private respondent through counsel manifested on December 23, 1980 that he is adopting his "Reply to Opposition" dated September 4, 1980, Annex "C" of the petition, as his comment to the petition.[3]

The aforesaid "Reply to Opposition" alleged that there was valid service of the copy of the decision on March 9, 1979 through counsel because the Deputy Sheriff served a copy of the decision on one Josephine A. Serrano, an employee of Atty. Arsenio O. de Leon; that the refusal of Josephine A. Serrano to receive a copy of the decision was of no moment or meaning; that Atty. de Leon was inexcusably negligent when he left for abroad without making provisions on who should manage his law office and how; and that the judgment has become final and executory.[4]

The record discloses that Josephine A. Serrano, the person on whom the sheriff attempted to serve a copy of the decision in Civil Case No. 95668 of the Court of First Instance of Manila, was not an employee of Atty. Arsenio O. de Leon, counsel of the petitioners. Josephine A. Serrano was the Assistant Manager of the Prompt Service and she was instructed by Atty. de Leon not to "receive in the absence of the other associates any pleading which may require immediate action for him". She was only requested "the favor of attending to incoming mails and/or court pleadings being served to his office" for the reason that "the Secretary of the law office was absent." [5]

The attempt of the Deputy Sheriff to serve a copy of the decision on Josephine A. Serrano was not a valid service under Section 4, Rule 13, Revised Rules of Court which provides that the service should be made on "the party or his attorney, or by leaving it in his office with his clerk or with a person having charge thereof."

Josephine A. Serrano was neither a clerk of Atty. Arsenio O. de Leon nor in charge of his office.

It does not appear that the Deputy Sheriff made any attempt to serve a copy of the decision on any of the associates of Atty. de Leon. There is no showing that the said Deputy Sheriff left a copy of the decision at the party's or attorney's residence with a person of sufficient discretion to receive the same.

The decision has not become final and executory. It should be properly served on the counsel of the petitioners.

WHEREFORE, the petition for certiorari is hereby granted and the order of execution of the decision in Civil Case No. 95668 dated October 29, 1980 and the writ of execution issued pursuant thereto are set aside. Let the said decision be immediately served on the counsel of the petitioners.

SO ORDERED.

Makasiar, Guerrero, and Melencio-Herrera, JJ., concur.

Teehankee, J., (Chairman), in the result.

[1] Rollo, p. 7.

[2] Rollo, pp. 3-6.

[3] Rollo, p. 39.

[4] Rollo, pp. 15-20.

[5] Rollo, pp. 16-17.

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.