

**CIRILA NOCON, AS EXECUTRIX OF THE TESTATE ESTATE OF THE
LATE ANDREA NOCON, PETITIONER, VS. HON. FRANCISCO
GERONIMO, AS JUDGE OF THE COURT OF FIRST INSTANCE OF
CAVITE, HEIRS OF C...**

G. R. No. L-11201. May 31, 1957

Ponente: FELIX, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/e3f9868b1b8a/>

FELIX, J.:

The properties involved herein were the alleged conjugal properties of the late spouses Simon Toledo and Andrea Nocon. The husband predeceased the wife and after the latter's death on July 19, 1955, testamentary proceedings were instituted on August 5, 1955, in the Court of First Instance of Cavite (Special Proceedings No. 5743), wherein petitioner Cirila Nocon was appointed administratrix thereof. The wills of Andrea Nocon and the order probating the same appear on record as Annexes A, A-1 and B.

While said testamentary proceedings were pending, as they are still pending, or specifically in September, 1955, respondent heirs of Celedonia, Jacinta, Silvina, Nicolas and Juan, surnamed Toledo, claiming to be the heirs of the deceased husband Simon Toledo, filed an action against herein petitioner Cirila Nocon as executrix of the estate of Andrea Nocon, deceased wife of the late Simon Toledo, and the spouses Melquiades Grepo and Encarnacion Villanueva,' (Civil Case No. 5755 of the Court of First Instance of Cavite—Annex C) seeking partition of the alleged conjugal assets of the late spouses Simon Toledo and Andrea Nocon and praying that defendants be ordered to make an inventory and accounting of all the if fruits of the properties beginning with the year 1950 and to deliver to the plaintiffs not only the shares corresponding to them from all the lands described in the Hi last will of Andrea Nocon (Annex A), but also the corresponding fruits, with interests from date they were gathered, and to reimburse the plaintiffs for their actual expenses (of litigation and attorney's fees) equivalent to 1/3 of the share corresponding to them, plus moral, nominal, moderate and exemplary damages in an amount not less* than P5,000.00, plus any other lawful, just and equitable relief to which they may be entitled in the premises. The defendant spouses were sued in said case No. 5755 because the late Andrea Nocon, without the knowledge and consent of plaintiff heirs of the aforementioned Toledos, sold on November 28, 1954, to said spouses lot No. 2285 mentioned in the will (Annex A).

Defendant Cirila Nocon and her co-defendant spouses answered that complaint, setting the affirmative defenses that plaintiffs' complaint states no cause of action and that they had another remedy, and a counterclaim in the sum of P3,000.00. In that answer, dated October 21, 1955, defendants denied that the disputed properties were conjugal, emphasizing that they were the exclusive or separate properties of the deceased wife Andrea Nocon, and further alleging that plaintiff heirs of Simon Toledo had "absolutely no right nor any interest of any kind in the properties listed in Annex A of the complaint."

On June 30, 1956, defendant Cirila Nocon, as the duly appointed and qualified executrix of the testate' estate of the late Andrea Nocon, filed a motion to dismiss (Annex D), alleging in substance (1) that the properties

inventoried in said testate proceedings as constituting the estate of the late Andrea Nocon are the very same properties which the herein nameless plaintiffs desire to partition in said' case 5755; and (2) that under Act No. 31.76 amending Section 685 of the Code of Civil Procedure and Section 2, Rule 75, of the Rules of Court, the conjugal partnership should be liquidated either in an ordinary partition action or in the corresponding administration proceeding for the settlement of the estate of either spouse, and prayed that the complaint be dismissed. Upon objection of the plaintiffs on the ground (1) that the answer of the defend- ants put in issue the question of title of the properties mentioned in the will (Annex A) ; and (2) that when the question of title to property is raised the same should be determined in an ordinary action and not in probate proceedings, and this whether or not the property is alleged to belong to the estate (Ongsiako, et al. vs. Tan, et al., 97 Phil., 330; Santiago vs. CFI of Rizal, 55 Phil. 62; and Devesa vs. Arties, 13 Phil. 273, and other case), the Court, by order of July 14, 1956, overruled the motion to dismiss for not being well founded. The motion for reconsideration of this order (Annex E) was also denied.

Because of these two orders and claiming that the trial Judge acted without or in excess of jurisdiction and with grave abuse of discretion in not dismissing the partition suit filed by respondents Toledo in Civil Case No. 5755; that his order denying petitioner's motion to dismiss is contrary to settled rulings of this Court; that respondent Judge had no jurisdiction to entertain the partition suit while the said testamentary proceedings for the settlement of the wife's estate are pending; that there can be no partition in a separate action such as in Civil Case No. 5755 because what can be partitioned only is the remmiente liquido, and this net remainder can only be determined in the testamentary proceedings; that partition and liquidation of the supposed conjugal partnership are required by law to be effected in the testamentary proceedings; and that the trial Court acted in a manner which is not in accord with the applicable decisions of this Court, when it did not dismiss the separate action for partition, and further claiming that she has no adequate and speedy remedy in the ordinary course of law, the petitioner executrix prays that the orders of respondent. Judge denying petitioner's motion to dismiss in Civil Case No. 5755 of the Cavite Court of First Instance be ^et aside with costs against respondent heirs of' said Toledos.

Considering the foregoing narration of facts and without going into the merits of the main, issue of these proceedings, it seems evident that petitioneir's present recourse of certiorari does not lie.

Rule 67 of the Rules of Court provides:

"Section 1. Petition for cerliorari.—When any tribunal, board, or officer exercising judicial functions, has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion and* there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of laiv, a person aggrieved thereby may file a verified petition in the proper court alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board, or officer, as the law requires, with costs."

So that where an appeal is in itself a sufficient and adequate remedy that would promptly relieve the petitioner from the injurious effects of the order or judgment complained of, the existence of that appeal would bar the institution of the remedy of certiorari. In the case at bar, if executrix Cirila Nocon, defendant in said Civil Case No. 5755, was not agreeable to the order of the Court refusing to dismiss the complaint filed against her and the spouses Grepo, she should have submitted herself for trial and let the lower Court render decision in the case and then appeal therefrom if she were not satisfied with the outcome of the same. In that case the lower Court had jurisdiction to pass upon and decide the motion to dismiss submitted by petitioner herself, and where there is jurisdiction over the subject matter, the decision or order on all other questions arising in the case is but an exercise of that jurisdiction (Herrera vs. Barretto et al., 25 Phil. 245, 251), and errors which the court may commit in the exercise of such jurisdiction are merely errors of judgment. Consequently, it is necessary to distinguish errors of jurisdiction from errors of judgment. The first may be reviewed in a certiorari proceed- ing (Henderson

vs. Tan, 87 Phil., 466) the second, by appeal (So Chu et al., vs. Nepomuceno,. 29 Phil. 208; De los Santos vs. Mapa, 46 Phil. 791; Santos vs. Court of First Instance, 49 Phil. 398; Ello vs. Judge of First Instance of Antique,- 49 Phil. 152; Gonzales vs. Salas, 49 Phil. 1; Ong Sit vs. Piccio, 78 Phil., 785, 44 Off. Gaz. (12) 4915, 78 Phil. 785; Castro vs. Pefla, 45 Off. Gaz., (Supp. to No. 9) 114, 80 Phil. 488; Herreros vs. Toledo, 45 Off. Gaz. (Supp. to No. 9), 411, 88 Phil. 260.

"Unless the abuse of discretion is grave, certiorari will not lie to correct an order denying a motion to dismiss. The reason for the rule is obvious. If every error committed by the trial court were to be the subject of review by certiorari, trials would be interminable. The contention that an order denying a motion to dismiss is merely interlocutory and hence not appealable is without merit since Section 2 of Rule 41, Rules of Court, does not prohibit an appeal but merely postpones it until after final judgment is rendered, in the case," (Arvisu vs. Vergara, 90 Phil., 621).

"The petition for certiorari with preliminary injunction filed in G. E. No. L-7882, Julia Fortus vs. the Hon. Juan Enriquez, etc., et al., is dismissed. The remedy is appeal after the decision on the merits." Resolution of June 25, 1954.)

We have already held that neither certiorari nor prohibition lies against an order of the court granting or denying a motion to quash an information (and the same thing can be said of a motion to dismiss a civil complaint). If the courts had jurisdiction to take cognizance of the case to decide the motion to quash or dismiss, appeal in due time is the obvious and only remedy for the parties affected therein (Arches to Beldia et al., G. R., No. L-2414, promulgated on May 27, 1949).

Wherefore, the petition filed herein is dismissed, with costs against the petitioner. It is so ordered.

Paras, C. J., Montemayor, Reyes, A., Bautista Angelo, Conception, Reyes, J. B. L., and Endencia, JJ., concur.

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.