

MELECIO DOREGO AND FELICIDAD DOREGO, PETITIONERS, VS. ARISTON PEREZ, THE HONORABLE RAMON BLANCO, AS PRESIDING JUDGE, COURT OF FIRST INSTANCE OF ILOILO AND THE PROVINCIAL SHERIFF...

G.R. No. L-24922. January 02, 1968

Ponente: BENGZON, J.P., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/f174af9c49d9/>

BENGZON, J.P., J.:

Respondent Ariston Perez was plaintiff in Civil Case No. 5568, an action for foreclosure of real estate mortgage, before the Court of First Instance of Iloilo. On March 22, 1961, judgment was rendered against defendants - now petitioners - Dorego spouses to pay respondent Perez the sum of P1,000.00, plus 12% interest from May 25, 1959, and 25% of the total sum as attorney's fees within 90 days from notification thereof or else the mortgaged properties would be sold at public auction.[1]

Petitioners appealed to the Court of Appeals.

On September 23, 1961, petitioners' counsel filed a manifestation in the Court of Appeals withdrawing their appeal on the allegation that the parties have already amicably settled the case for P1,300.00.[2] The Court of Appeals on September 29, 1961, issued a resolution requiring petitioners' counsel to present the written conformity of petitioners themselves to the withdrawal of the appeal, and for them to pay the appeal docket fees first before their manifestation would be acted upon.[3] Apparently, the resolution was not complied with for on January 26, 1962, the Court of Appeals resolved to dismiss the appeal for appellants' failure to pay the docket fees.[4]

Upon the remand of the records to the court a quo, respondent Perez moved for execution of its judgment. This was opposed by petitioners. On March 31, 1962, the lower court "disregarded" the opposition filed since the Court of Appeals' resolution dismissing the appeal did not mention any amicable settlement and forthwith issued the writ of execution.[5]

Petitioners sought an urgent reconsideration of the order of March 31, 1962, annexing to their motion a copy of the agreement between the attorneys for the parties mentioning the amicable settlement between the latter.[6] Respondent Perez opposed and was sustained by the lower court which, on July 6, 1963, denied petitioners' motion, ruling that the agreement between the counsels was ineffective to constitute a novation of the rights and obligations of the parties themselves. It also directed the provincial sheriff to proceed with the sale of the mortgaged properties.[7]

Instead of appealing, petitioners instituted Civil Case No. 6369 before another branch of the Court of First Instance of Iloilo to annul the decision in Civil Case No. 5568 and enjoin its execution. On September 24, 1964, the case was dismissed.[8] Also dismissed subsequently was the attempted appeal by petitioners in Civil Case No. 6369, for their failure to duly perfect the same.[9]

On July 8, 1965, the lower court issued an alias writ of execution in Civil Case No. 5568. Accordingly, the mortgaged properties were advertised by the provincial sheriff for public sale to be held on August 31, 1965.

On August 28, 1965, petitioners instituted the instant petition for certiorari with preliminary injunction. We gave due course to it.

On August 31, 1965, the mortgaged properties were sold at public auction to respondent Perez for P2,000.00. The latter then sought to confirm the sale. The petitioners counter-moved to postpone the confirmation of the sale up to September 20, 1965 since they were "feverishly looking for money with which to redeem the property." [10] The lower court postponed the confirmation of the sale up to October 11, 1965.

On October 12, 1965, respondent Perez filed his answer to the petition.

The only issue here is whether the lower court gravely abused its discretion or exceeded its jurisdiction in denying petitioners' opposition to the motion for execution by its order of March 31, 1962; in also denying the motion to reconsider by its order of July 6, 1963, and in allowing, thereafter, the execution of the decision rendered in respondent's favor.

Petitioners submit that since the decision of March 22, 1961 had already been novated by the amicable settlement between the parties effected sometime in the second week of September, 1961, the same could no longer be executed. The only - but fatal - flaw in the argument is that petitioners have assumed what precisely they had to establish in the first place, i.e., the fact of amicable settlement. For, respondent denies it.

Petitioners could only fall back on the following documents annexed in their motion to reconsider: (1) the manifestation their counsel filed in the Court of Appeals on September 23, 1961; (2) the receipt signed by their counsel and one of respondent's counsels; and (3) the self-serving affidavits of petitioner Melecio Dorego and his counsel. [11] Of the three, the strongest evidence would be the receipt, which is of the following tenor:

"1. In view of the fact that the case of Ariston Perez vs. Melecio Dorego, et al., has been notified [sic] in the sum of P1,300.00 including attorney's fees, Melecio Dorego has caused to be withdrawn his appeal in the Court of Appeals by a manifestation dated September 23, 1961;

"2. That the attorneys or counsels for Ariston Perez have magnanimously foregone their attorney's fees as stated in the decision and in its place request for only P150.00.

"3. Receipt of P100.00 is acknowledged today, the remainder shall be payable at the end of this month. Atty. Sixto Demaisip holds himself personally liable for the payment thereof in the event of non-payment of Melecio Dorego.

"September 26, 1961.

"(Sgd) SIXTO P. DEMAISIP (Sgd) ALFREDO LADRIDO"

But as the lower court noted, the above receipt could only prove the personal agreement between the counsels. And respondent correctly points out that this could not prove the oral amicable settlement between the parties since without special authorization, counsels cannot compromise their client's litigation. [12] The special authorization of respondent's counsel has not been shown.

Considering that there was no satisfactory proof of the alleged amicable settlement between the parties and since the resolution of the Court of Appeals plainly shows that the appeal was being dismissed for failure of petitioners - who were the ones supposed to be interested in maintaining the appeal - to pay the appeal docket fees, We cannot say that the lower court even erred in granting respondent's motion to execute the judgment which had become final and executory. Under the Rules of Court, the effect of dismissal or withdrawal of an appeal is for

the question judgment to stand as if no appeal had been instituted.[13] Execution, therefore, was proper.

WHEREFORE, the petition for certiorari is, as it is hereby, dismissed. Costs against petitioners.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur.

[1] Rollo, pp. 17-18.

[2] Rollo, p. 34.

[3] Rollo, p. 83.

[4] Rollo, p. 82.

[5] Rollo, pp. 22-23.

[6] See *infra*, p. (3).

[7] Rollo, p. 41.

[8] Rollo, pp. 87-89.

[9] Rollo, pp. 90-91.

[10] Rollo, p. 94.

[11] Rollo, pp. 34-37.

[12] Sec. 23, Rule 138, Rules of Court.

[13] Secs. 2 & 4, Rule 50, Rules of Court.

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.