

PABLO BARREDO AND ANGELINA BARREDO, PETITIONERS VS. HON, VICENTE SANTIAGO, JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, BRANCH, VIII, LUIS FRANCISCO AND ADELA BLAS DE FRANCIS...*G.R. No. 11035. September 30, 1957*

Ponente: PADILLA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-11035/>**PADILLA, J.:**

Sometime in 1954 the respondent spouses Luis Francisco and Adela Bias de Francisco brought a detainer action in the Municipal Court of Manila against the petitioner's to recover possession of Booth No. 22, Block No. 81, of the San Lazaro Estate (civil No, 32370). The Municipal Court dismissed the action for lack of jurisdiction, determination of the ownership of the booth being involved (Annex A). The respondent spouses appealed to the Court of First Instance (civil No, 24356) and pending the appeal, the respondent spouses withdrew it with the consent of the petitioners (Annex B). On 10 August 1955 the respondent spouses brought an action against the petitioners in the Court of First Instance of Manila for recovery of possession of the booth, rentals due and at P30 a month from August 1953 to August 1955 and as may become due and payable until after possession of booth shall have been restored to the respondent spouses, ges, attorney's fees and costs (civil No. 27343; Annex 1), er trial, the Court rendered judgment for the respondent ordering the petitioners —

- (1) To vacate and surrender to the former Booth No. 22 on Block No. 81 of the San Lazaro Estate;
- (2) To pay the former the sums of (a) P720.00 representing the rentals in arrears at the rate of P30.00 a month from August, 1953 to August, 1955 and such other rentals as may fall due and demandable up to and until they shall have vacated the booth in question;
- (3) P500.00 for attorney's fees; and the costs of suit.

Defendants' (petitioners') counter-claim is hereby dismissed for lack of merit. (Annex 2.)

From this judgment the petitioners filed a notice of appeal, an appeal bond and a record on appeal. On motion, the Court granted the respondents five days from 7 July 1956 within . which to file objection to the allowance of the record on appeal (Annex 3). In a motion filed with the respondent court on 1-1 July 1956 (Annex C) and in a supplementary motion filed on 14 July 1956 (Annex 4), the respondent spouses prayed for execution of the judgment on the ground that the petitioners had not filed a supersedeas bond and had not deposited in court nor had they paid to the respondent spouses the monthly rentals fixed in the judgment on or before the tenth day of each and every calendar month; and that the respondent spouses had been deprived by the petitioners of the use, [Occupation and enjoyment of their property for more than one year. The petitioners objected to the execution of the judgment as prayed for by the respondent spouses, on the ground that as the action is not of forcible entry and detainer under Rule 72, the Court cannot order the execution of its judgment pending appeal and may do so only for good to be stated in a special order pursuant to section 2, Rule 39 (Annex B). On 4 August 1956 the

respondent court entered an order granting the writ of execution prayed for by the respondent spouses (Annex G). On 6 August 1956 the , respondent deputy sheriffs executed the order and delivered possession of the booth to the respondent Adela Bias de Francisco (Annex 6).

"Contending that the respondent court acted with grave case of discretion and that there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, the petitioners come to this Court and pray —

- That a writ of preliminary mandatory injunction be issued, upon the filing of the proper bond ordering the respondents Francisco, and Deputy Sheriffs Basilio Magsombol and Melanio P. Ramos to return the possession of Booth No. 22 to petitioners;
- That the order issued by respondent Honorable Vicente Santiago be annulled and set aside;
- That respondents Francisco and Deputy Sheriffs Basilio Magsorabol and Melanio 'B. Ramos be ordered to indemnify petitioners for such damage that petitioners may prove upon proper hearing, as having been suffered by them because of the illegal act committed, plus costs.

Petitioners further pray for any other relief in law or equity to which they may be entitled.

On 17 August 1956 this Court issued a writ of preliminary mandatory injunction after the filing of a bond in the P1,000, ordering the respondent spouses to return the possession of the booth in question to the petitioners. As I booth was found by the sheriffs to be in the possession of another, on 12 September 1956 this Court amended the writ ordering whomsoever, is in possession of it to deliver the to the petitioners. On 20 September 1956 the petitioners received possession of the booth.

The petitioners contend that as the action brought by respondent spouses against them in the Court of First Instance of Manila (civil No. 27343; Annex 1) is an action reivindi catoria and not of forcible entry and detainer under 72, the provisions of sections 8 and 9 of the rule, propiling for immediate execution in case the defendant fails to be a supersedeas bond or to deposit in court or to pay to 'plaintiffs the monthly rentals or reasonable value or compensation for the use and occupation of the premises as fixed the judgment of the Court on or before the tenth day of the calendar month, do not apply.

In their complaint the respondent spouses allege that are the lessors and the petitioners are the lessees of Booth No. 22, Block No. 81, of the San Lazaro Estate, the platter having undertaken to pay to the former the sum of P30 monthly as rental for its use and occupation, with which obligation the petitioners failed to comply from August 1953 to August 1955. They sought to recover possession of the booth and to collect the unpaid rentals. The respondent court found that the respondent spouses were lessors and the petitioners lessees of the booth and that the latter had failed to pay the rentals for the use and occupation of the booth, and rendered judgment for the respondent spouses. Had the action been brought by the latter within one year from August 1953, when the petitioners first failed to pay the rentals, their action would have been brought properly under Rule 72. As the action to recover possession and to collect due and unpaid rentals was brought on 10 August 1955, more than one year from the time the petitioners began to withhold unlawfully the possession of the booth, the action was publiciana or plenaria de posesion. Obviously, the provisions of Rule 72 on forcible entry and detainer actions do not apply to publiciana or plenaria de posesion actions , for the simple reason that the former being summary must be constnued restrictively. Hence the respondent court committed an error in basing or predicating its order directing the execution upon Rule 72. [1] Analyzing, however, the substance of the order, its entry may be deemed justified under and pursuant to section 2, Rule 39, because the order recites the fact that the petitioners are lessees of the booth and the respondents the lessors (Annex 7); that the petitioners as lessees had not paid the stipulated rental of P30 a month from August 1953 to August: 1955 and the rentals thereafter up yo August 1956; and that the respondent spouses have no assurance or security that the jugment appealed from, if affirmed, would

be satisfied by the petitioners. The order assailed recites or states good reasons to justify the issuance of the writ of execution despite the appeal taken by the petitioners from the judgment rendered against them.

The writ of certiorari prayed for is denied, but the respondent, court is directed to fix the amount of the supersedeas bond that the petitioners may file to stay the execution of the judgment; the writ of preliminary mandatory injunction heretofore issued is discharged, without pronouncement as to costs.

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

[1] Torres vs. Ocampo, 45 Off. Gaz. 2576; Feldman vs. Encarnacion, 48 Off. Gaz. 3874.

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.