

**FABIANA QUIOGUE AND PRUDENCIO BUENAVENTURA, PLAINTIFFS
AND APPELLEES, VS. TOMAS STA. TERESA, DEFENDANT AND
APPELLANT.**

G. R. No. 45399. September 04, 1937

Ponente: AVANCENA, C.J.

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AVANCENA, C.J.:

This is an action brought in the justice of the peace court of Tagig, Rizal, for the recovery of a certain sum of money from the defendant. The justice of the peace court ordered the defendant to pay to the plaintiffs the amount claimed and from said decision the defendant appealed to the Court of First Instance.

On July 6, 1936, the Honorable Leopoldo Rovira dismissed the case, without costs, for failure to prosecute it. On the 18th of the following August the plaintiffs asked that the record of the case be remanded to the justice of the peace court of Tagig so that the judgment rendered by the latter court might be executed. On said date the court granted said petition and this resolution was excepted to by the defendant.

The only question raised before this court is whether or not it was tenable to remand the case to, the justice of the peace court of Taguig, for the execution of the judgment rendered therein by said court, after it had been dismissed by the Court of First Instance.

The dismissal of the case was ordered by the court in accordance with section 127, paragraph 3, of the Code of Civil Procedure, which dismissal is not a bar to another action for the same cause. This means that the dismissal in question did not again render operative the appealed judgment, which was set aside by virtue of the appeal, as distinguished from the case where it is the appeal which is dismissed, the effect of which is to revive the appealed judgment. Therefore, as the appealed judgment is inoperative, it cannot be executed.

Wherefore, the appealed resolution of the Court of First Instance dated August 18, 1936, is reversed, with costs to the appellees. So ordered.

Villa-Real, Abad Santos, Imperial, Diaz, Laurel, and Concepcion, JJ., concur.

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