

COSME PROFETA ET AL., PETITIONERS, VS. JOSE GUTIERREZ DAVID, AS JUDGE OF COURT OF FIRST INSTANCE OF CAVITE, THE SHERIFF OF CAVITE AND EDUVIGES BONUS, RESPONDENTS.*G.R. No. 47736. April 18, 1941*

Ponente: LAUREL, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-47736/>**LAUREL, J.:**

This is an original petition filed by the petitioners with this Court against the Honorable Jose Gutierrez David, as Judge of the Court of First Instance of Cavite, the Provincial Sheriff of Cavite, and Eduviges Bonus, as respondents, for the issuance of a writ of certiorari with injunction to restrain the said court from enforcing its orders of August 27 and September 2, 1940, in civil case No. 3690, entitled "Intestate Estate of Hermenegildo Profeta," requiring the petitioners herein to surrender possession of lots Nos. 1878 and 1879 of the Santa Cruz de Malabon Estate to respondent Eduviges Bonus. By resolution of this court, dated September 11, 1940, a writ of preliminary injunction was issued commanding the respondent court to refrain from further proceeding on the said intestate case No. 3690 until further order from this Court.

The factual background which gave rise to the present proceedings may be briefly stated thus:

Teodora Bocalan died on or about November 30, 1932, leaving three legitimate children, namely, Bonifacio Profeta, Cosme Profeta, and Hermenegildo Profeta. Bonifacio subsequently died but is survived by his legitimate children, who, with said Cosme Profeta are the petitioners in the present case. In the intestate proceedings (civil case No. 2697) had before the Court of First Instance of Cavite for the settlement of the estate left by the deceased Teodora Bocalan, Hermenegildo Profeta was appointed general administrator. In order to pay the debts and claims against the estate of the said deceased which were approved by the committee on claims in intestate case No. 2697 as well as the expenses of administration, the Court of First Instance of Cavite, on November 14, 1935, upon petition of the said administrator granted license to sell lot No. 1878 of the Sta. Cruz de Malabon Estate which formed part of the estate left by the deceased, Teodora Bocalan. On December 16, 1935, the lot in question was sold to Deogracias Solis for P6,000, the said purchaser paying the judicial administrator the amount of P4,512.43 in cash and at the same time assuming the balance of a mortgage indebtedness in favor of the Philippine National Bank in the amount of P1,487.57. This sale in favor of Deogracias Solis was, on December 17, 1935, confirmed by the court and registered in the Office of the Register of Deeds, which issued a transfer certificate of title in favor of Deogracias Solis. With the proceeds of the sale of lot No. 1878, the judicial administrator paid the expenses of administration and forty per centum (40%) of the approved claims against the estate, and later on filed his accounts which were approved by the court over the objections of the herein petitioners. The petitioners who were duly represented in all these proceedings did not appeal from the order of the court granting license to sell lot No. 1878, nor from the confirmation of the said sale, nor from the approval by the court of the accounts filed by the judicial administrator.

On May 23, 1939, Hermenegildo Profeta died and is survived by his widow, the herein respondent, Eduviges

Bonus. Forming part of the estate left by him were the controverted lot No. 1879 and a right to the possession and enjoyment of lot No. 1878 which was previously sold to Deogracias Solis as abovestated. It appears that in 1936, the deceased, Hermenegildo Profeta, entered into an agreement with the said Deogracias Solis whereby the former agreed to purchase lot No. 1878 by making annual payments on the price thereof with interest at twelve per centum (12%) on the unpaid balance, title on the land to remain in the owner, Deogracias Solis, until the price is fully paid, but the possession and enjoyment thereof to pass to the purchaser, Hermenegildo Profeta. Intestate proceedings (civil case No. 3690) for the settlement of the estate of the deceased, Hermenegildo Profeta, were commenced by the respondent, Eduviges Bonus, in the Court of First Instance of Cavite, and on April 13, 1940, the said Eduviges Bonus was appointed judicial administratrix therein.

The parties in their narration of facts are not in accord as to how the petitioners herein came into possession of the two lots involved in this controversy. It is alleged by the petitioners that Cosme Profeta's children, particularly Pablo Profeta and Ananias Profeta, since the death of Teodora Bocalan, have been in possession of said lots Nos. 1878 and 1879 in the firm and honest belief that their father, Cosme Profeta, one of the petitioners herein, had inherited the same as his share of the estate left by his mother, Teodora Bocalan. Respondent Eduviges Bonus, on the other hand, claims that lot No. 1878 had been in the possession of her deceased husband, Hermenegildo Profeta, as judicial administrator in case No. 2697, from the death of Teodora Bocalan until the sale thereof to Deogracias Solis in 1935, and from 1936 when the same was purchased by him from Deogracias Solis until his death in 1939; that lot No. 1879 had been in the possession of Hermenegildo Profeta from his purchase thereof in or about 1930 until his death; that at the start of the working season in June, 1940, Pablo Profeta and Ananias Profeta, sons of petitioner Cosine Profeta, through force and intimidation took possession of the said lots Nos. 1878 and 1879 and ejected her therefrom. In any case, the records disclose that respondent Eduviges Bonus, as administratrix of the intestate estate of the deceased, Hermenegildo Profeta, on June 10, 1940, filed in civil case No. 3690 a motion for the possession of lots Nos. 1878 and 1879, which motion was granted in various orders subsequently issued by the respondent court, the last of which were the orders of August 27 and September 2, 1940, the enforcement of which is now sought to be prevented through the institution of the instant petition for a writ of certiorari.

It is contended by the petitioners that the Court of First Instance of Cavite acted without jurisdiction and abused its discretion in granting the license to sell lot No. 1878 in the intestate estate of Teodora Bocalan (case No. 2697) allegedly without previous and due notification to, and express written consent of, the herein petitioners, who are the direct heirs of said estate. It should be observed here, however, that the petitioners have neglected to appeal from the said order granting license to sell lot No. 1878. An order for a license to sell real estate in administration proceedings is in the nature of a judgment upon the issues involved and an appeal may be taken therefrom as in the case of any other judgment. (*Santos vs. Roman Catholic Bishop of Nueva Caceres*, 45 Phil., 897, 899.) If there was, therefore, any defect or infirmity in the order of the respondent court as alleged by the petitioners, it was properly curable by appeal, and since the petitioners' remedy by appeal had been lost due to their own negligence, they cannot now seek redress by petition for a writ of certiorari.

The petitioners likewise contend that lot No. 1879 was fraudulently acquired by the deceased, Hermenegildo Profeta. They allege that when he made out and submitted the inventory of the property left by Teodora Bocalan, in his capacity as administrator of her intestate estate in case No. 2697, he maliciously and purposely concealed, omitted and excluded lot No. 1879 therefrom, and through fraud and misrepresentation made it appear that the purchase thereof was made by himself and not by the said Teodora Bocalan. This contention of the petitioners involves an inquiry as to the ownership of said lot No. 1879 which can be determined neither in the instant petition for a writ of certiorari nor in the course of administration proceedings for the settlement of the estate of the said Hermenegildo Profeta. If the petitioners herein consider themselves entitled to the ownership and

possession of the lot in question, their claim should be submitted to the proper Court of First Instance exercising general jurisdiction to try and determine ordinary actions. (Franco v. O'Brien, 13 Phil., 273; De los Santos v. Jarra, 15 Phil., 147; Guzman v. Anog, 37 Phil, 61; Santiago v. Court of First Instance, 55 Phil., 62.)

The petition for certiorari is hereby dismissed and the preliminary injunction granted by this Court dissolved, with costs against the petitioners. So ordered.

Imperial, Diaz, Moran and Horrilleno, 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.