

EDILBERTO BERNAS AND BALDONERA BULQUIRIN AND TEOFILO BERANO, PETITIONERS, VS. THE HONORABLE PELAYO V. NUEVO, JUDGE OF THE COURT OF FIRST INSTANCE OF CAPIZ, CIRIACO ABELLA VITO, ...

G.R. No. 58438. January 31, 1984

Ponente: GUTIERREZ, JR., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-58438/>

GUTIERREZ, JR., J.:

These are interrelated petitions for certiorari seeking the annulment of orders issued by the Court of First Instance of Capiz in the same case pending before it and involving the same parcel of land. In G.R. No. 58438, petitioners, Edilberto Bernas, Baldonera Bulquirin, and Teofilo Berano ask that the August 28, 1981 order of respondent Judge Pelayo V. Nuevo and the writ of possession dated September 3, 1981 be declared null and void. In G.R. No. 60423, petitioner Bellosillo prays that we nullify the December 8, 1981 order of respondent Judge Oscar Leviste which set aside the August 28, 1981 order of Judge Nuevo and the January 26, 1982 order of Judge Leviste denying a motion for reconsideration of the December 8, 1981 Leviste order.

On February 17, 1981, the Heirs of Pascual Bellosillo and Francisca Besa, represented by Silvestre Bellosillo, petitioners in G.R. No. 60423, filed a complaint against defendants Edilberto Bernas, Baldonera Bulquirin and Teofilo Berano for recovery of possession of a 33 1/3 hectare parcel of land known as Lot 3382 Of the Panay Cadastre and for the issuance of a writ of preliminary injunction to restore the plaintiffs to the possession of the land in dispute. The case was docketed as Civil Case No. V-4471.

The motion for the issuance of a preliminary injunction having been denied, the plaintiffs subsequently filed another motion for the issuance of a writ of possession on the ground that the same is paramount for the preservation of the estate represented by Lot 3382, otherwise it will be dissipated and the plaintiffs as heirs might have nothing to inherit, while the defendants have not shown any definite title or right over the estate as they had first claimed that they were lessees then later, tenants, which are two incompatible and divergent sources of right.

On August 28, 1981, Judge Pelayo Nuevo granted the writ of possession applied for by plaintiffs after pre-trial and hearing of the motion for the issuance of said writ.

A motion for reconsideration was filed by defendants on September 12, 1981, but the same was not acted upon due to the retirement of Judge Nuevo. Hence, the defendants filed the petition for certiorari docketed as G.R. No. 58438.

Meanwhile, the sala vacated by Judge Nuevo was filled through the appointment of Judge Oscar Leviste. While the petition assailing the order granting the writ of possession was pending before this Court, Judge Leviste, on December 8, 1981, acted on the motion for reconsideration filed by the defendants in civil case No. V-4471 on September 12, 1981 and issued an order declaring null and void the writ of possession issued by former Judge Nuevo. In a subsequent order dated April 20, 1982, the same Judge also ordered the defendants to be placed in

possession of the property in question, Lot 3382. Hence, A petition for certiorari was filed, this time by the plaintiffs in Civil Case No. V-4471 and docketed in this Court as G.R. No. 60423.

In G.R. No. 58438, the petitioners' main contention is that respondent Judge Nuevo acted in excess of jurisdiction when he granted the writ of possession solely on a mere motion against petitioners who had been in possession of the land for about 21 years after the issuance of a final decree by the Land Registration Commission and who were not oppositors in the original registration case of the lot in 1930.

On the other hand, the petitioners in G.R. No. 60423 maintain that respondent Judge Leviste acted in excess of jurisdiction and/or grave abuse of discretion in issuing both orders dated October 12, 1981 and April 20, 1982, knowing fully well that there was a pending petition for certiorari before the Supreme Court filed by private respondents docketed as G.R. No. 58438, questioning the propriety of the issuance of the writ of possession, which was the same subject-matter of the above orders.

We find merit in both petitions.

It is a settled rule that when parties against whom a writ of possession is sought have been in possession of the land for at least ten years, and they entered into possession apparently after the issuance of the final decree, and none of them had been a party in the registration proceedings, the writ of possession will not issue. A person who took possession of the land after final adjudication of the same in registration proceedings cannot be summarily ousted through a writ of possession secured by a mere motion and that regardless of any title or lack of title of persons to hold possession of the land in question, they cannot be ousted without giving them their day in court in proper independent proceedings. (See *Manuel, et al., v. Rosauo, et al.*, 56 Phil. 365, and *Maglasang v. Maceren, et al.*, 83 Phil. 637 cited in *Heirs of Cristobal Marcos v. De Banuvar*, 25 SCRA 316).

In the case at bar, the defendants-petitioners had been in possession of the lot since 1960 under an alleged lease contract and were not a party to the original registration case of the same way back in 1930. This notwithstanding, the writ was issued after pre-trial and hearing of the motion for the issuance of the writ only and not after final adjudication of the rights of the parties over the lot in controversy. Therefore, it was a patent error on the part of respondent Judge Nuevo to issue the questioned writ. The rule is "when other persons have subsequently entered the property, claiming the right of possession, the owner of the registered property or his successors in interest cannot dispossess such persons by merely asking for a writ of possession. The remedy is to resort to the courts of justice and institute a separate action for unlawful entry or detainer or for reinvindicatory action, as the case may be:" (Peña, *Registration of Land Titles and Deeds*, p. 99, citing *Yuson and de Guzman v. Diaz*, 42 Phil. 22). Only after judgment has been rendered can the prevailing party secure a writ of possession to enforce his right over the disputed lot.

We also find that the questioned orders of respondent Judge Leviste were issued without jurisdiction, notwithstanding the fact that the writ of possession was not in order. It was presumptuous on his part to grant the motion for reconsideration when he knew very well that the subject-matter of said motion was still pending with this Court in a petition for certiorari. The act of issuing the orders constituted disrespect and disregard of the authority and jurisdiction of this Court. (See *Corpus v. Court of Appeals*; 98 SCRA 424). The respondent judge should have waited for this Court's decision before acting on said motion for reconsideration and issuing the said orders.

WHEREFORE, the order of Judge Pelayo Nuevo dated August 28, 1981, is hereby REVERSED and SET ASIDE. The orders of Judge Oscar Leviste dated December 8, 1981 and April 20, 1982 are also REVERSED and SET ASIDE. As a matter of right, the petitioners-defendants in G.R. No. 58438 should remain in possession of Lot No. 3382 pending final adjudication of the respective rights of both petitioners in Civil Case No. V-4471. No costs.

SO ORDERED.

Teehankee (Chairman), Melencio-Herrera, Plana, and Relova, 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.