

MARIANO REAS, PETITIONER, VS. RUFINO BONIFE AND HONORABLE AUXENCIO DACUYCUY, PRESIDING JUDGE OF BRANCH IV, C.F.I., CANDAHUG, PALO, LEYTE, RESPONDENTS.

G.R. Nos. 54348-49. October 17, 1990

Ponente: CORTES, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-nos-54348-49/>

CORTES, J.:

Assailed in this petition for certiorari is the order of execution and the order denying a motion for reconsideration of the Court of First Instance of Leyte, on the ground that these amend and/or alter the final and executory judgments rendered in Civil Cases Nos. 2729 and 5005.

The subject of this controversy are some parcels of land located in Nalibunan, Abuyog, Leyte (hereinafter referred to as the Nalibunan Estate), which were originally owned by the spouses Silvestre Alvero and Gertrudes Regis. Upon their demise, the Nalibunan Estate was inherited by four of their six children, namely, Feliciana, Romana, Cipriana and Juan. Another parcel of land located in Malaguining, Abuyog, Leyte, went to their two other children, Matias and Emilio.

When Feliciana died, her son Mariano Reas (petitioner herein) inherited her share of the property. Romana in turn was succeeded by her son Rufino Bonife (private respondent herein).

However, both Juan and Cipriana died without issue. As a consequence thereof, a series of cases arose between their collateral heirs, among whom are petitioner and private respondent herein, to determine who were entitled to their respective shares in the Nalibunan Estate and in what proportion.

This case in particular would not have reached the Court had the parties informed the courts below that the Nalibunan Estate comprises not only the property described in plan psu-73638 which contains a total of 32,785 square meters, but includes also some parcels of land north of plan psu-73638. All in all therefore, the Nalibunan Estate has an aggregate area of some 43,415 square meters.

A. The first case, Civil Case No. 2729, was brought by the heirs of Alejandra Alvero, a niece of Cipriana, seeking to quiet title to Cipriana's share of the Nalibunan estate allegedly acquired by Alejandra from Cipriana partly by inheritance and partly by purchase from Cipriana's other heirs. The defendants named in the case were petitioner and Paula Vda. de Alvero, the widow of Norberto Alvero who was one of Cipriana's nephews. The land described in the complaint as comprising the entire Nalibunan Estate, undisputed by the defendants, was only that described in plan psu-73638. This is where the confusion begins.

The lower court ruled in favor of plaintiffs, declaring them to be the sole and exclusive owners of the land. On appeal, the Court of Appeals in C.A.-G.R. No. 32290-R found that: (1) the share of Cipriana in the Nalibunan estate was indeed acquired by Alejandra Alvero; (2) upon Alejandra's death in 1940, petitioner, Rufino Alvero, one of the plaintiffs, and Norberto Alvero, took possession of the property; (3) on October 12, 1949, they partitioned the property into four (4) equal parts, with Rufino Alvero taking two parts, and subsequently declared

their shares for taxation purposes. On the basis of these findings, the Court of Appeals reversed the lower court and held that the defendants had acquired the ownership of the portions occupied by them through acquisitive prescription.

In the same decision, the Court of Appeals also found that Juan's share in the Nalibunan estate was inherited by and subsequently partitioned into four (4) equal parts by his four nephews, namely, petitioner, private respondent, Rufino Alvero and Norberto Alvero, as evidenced by an affidavit executed on February 10, 1951.

This Court affirmed the decision of the Court of Appeals in *Alvero v. Reas* [G.R. No. L-28337, September 30, 1970, 35 SCRA 210.]

B. Subsequent to this case, Civil Case No. 5005 was filed by private respondent against petitioner to recover the property he inherited from Juan Alvero.

The lower court, deciding in favor of private respondent, declared him to be the lawful owner of one-fourth (1/4) of the lot left by Juan and ordered petitioner to vacate the portion occupied by him and restore possession thereof to private respondent. However, still under the impression that the entire Nalibunan Estate comprised only that described in plan psu-73638, the trial court pegged his one-fourth share to be 2,500 square meters, more or less. On appeal, the Court of Appeals in C.A.-G.R. No. 57380-R affirmed the lower court decision, guided by its previous findings of facts in C.A.-G.R. No. 32290-R.

C. Private respondent thereafter moved for the execution of the judgment rendered in his favor in Civil Case No. 5005. However, he asserted therein that the shares of Romana and Feliciano in the Nalibunan estate were not included in plan psu-73638. This should therefore be subdivided not into four (4), but only into two (2) parts - the northern half as Cipriana's share and the southern half as Juan's share. To fully determine the extent of plan psu-73638 and thereafter adjust the corresponding one-fourth (1/4) share of the four heirs of Juan, private respondent proposed the relocation survey of plan psu-73638.

The trial court rejected the proposal on the basis of the finding of the Court of Appeals in C.A.-G.R. No. 32290-R that the share of Cipriana was situated in the middle of the property covered by plan psu-73638, between the northern portions inherited by Feliciano and Romana and the southern portion inherited by Juan [Decision, p. 11; Rollo, p. 17.] Therefore, the court ordered that plan psu-73638 be subdivided into four (4) equal parts, each part representing the share of Romana, Feliciano, Cipriana, and Juan, and that thereafter, the share of Juan be subdivided into another four (4) parts, which would be approximately 2,049 square meters each for his four heirs. Another motion by private respondent for the adjustment of shares was likewise denied.

D. In accordance with such order, private respondent filed another action against petitioner docketed as Civil Case No. 5777 for the partition of the property covered by plan psu-73638, praying that this be subdivided into four (4) equal parts corresponding to the shares of Romana, Feliciano, Cipriano and Juan. Petitioner this time contested the action on the ground that Cipriana's share in the property embraced by plan psu-73638 was adjudicated by this Court in G.R. No. L-28337 only to the defendants in Civil Case No. 2729, namely he and Paula Vda. de Alvero. He likewise alleged, apparently in conformity with the original claim of private respondent that plan psu-73638 comprised only a part of the Nalibunan Estate and was subdivided only between Cipriana and Juan, that he had always been in possession of the land representing the share of his mother Feliciano while private respondent had also been in possession of the share of his mother Romana. At the pre-trial of the case, private respondent reasserted his original claim.

The parties being in apparent agreement that the shares of Feliciano and Romana were located outside of and to the north of the land described in plan psu-73638, the court ordered the relocation survey of the property

described in plan psu-73638 by Geodetic Engineer Cruz Abarca.

Engineer Abarca thus reported:

1. That per relocation survey conducted by the undersigned Lot 1 and Lot 2, respectively alleged to be belonging (sic) to Romana Alvero and Feliciano Alvero, respectively, in relation to Psu-73638, are situated outside of the metes and bounds of the said lot under Psu-73638, but on the latter's northern boundary;
2. That the area of the lot under Psu-73638 does not extend to the Mabini Street. [Decision, pp. 8-9; Rollo, pp. 51-52.]

As a result of this survey, the trial court found that "the inheritance left by the spouses Silvestre Alvero and Gertrudes Regis in Nalibunan, Abuyog, Leyte is not Psu-73638 only but extends to Mabini Street and includes the lands north of Psu-73638 now occupied by the heirs of Feliciano and Romana Alvero" [Decision, p. 9; Rollo, p. 52.]

On the basis of this finding, the lower court dismissed the action for partition without prejudice to private respondent's right to ask for the execution of the judgment in Civil Case No. 5005.

E. Private respondent thereafter moved for the execution of the judgments entered in Civil Cases Nos. 2729 and 5005, attaching thereto a sketch plan of the property described in Psu-73638 prepared by Geodetic Engineer Delfin Deligero, dividing the lot from north to south not only into two (2), but into four (4) equal parts. This is a complete turnabout from his original claim.

However, reiterating that all doubts as to the location and extent of the property covered by Psu-73638 had been resolved, the lower court ordered the division of said property into two (2) parts only - the northern half containing 16,392 square meters to Cipriana Alvero and the southern half containing 16,393 square meters to Juan Alvero. Thus, in accordance with the decisions rendered on appeal in the previous cases (specifically Civil Cases Nos. 2729 and 5005) between the heirs of Cipriana and Juan Alvero, their shares to Psu-73638 were then adjudicated as follows, without prejudice to the parts taken by the government for road purposes:

A. Cipriana Alvero (the northern half containing 16,392 square meters):

Mariano Reas -- 1/4 -- 4,098 sq. m.

Rufino Alvero -- 1/2 -- 8,196 sq. m.

Norbeto Alvero -- 1/4 -- 4,098 sq. m.

B. Juan Alvero (the southern half containing 16,393 square meters):

Rufino Bonife -- 1/4 -- 4,099 sq. m.

Norberto Alvero -- 1/4 -- 4,098 sq. m.

Rufino Alvero -- 1/4 -- 4,098 sq. m.

Mariano Reas -- 1/4 -- 4,098 sq. m.

[Order, p. 3; Rollo, p. 58.]

Consequently, petitioner filed a motion for reconsideration of said order, alleging that the lower court erred in: (1) awarding Rufino Alvero, one of the plaintiffs in Civil Case No. 2729, 8,196 square meters of the property left by Cipriana Alvero, and (2) allotting to private respondent more than 2,500 square meters of the property left by Juan Alvero, which is not in accordance with the decision of the lower court in Civil Case No. 5005, as affirmed by the

Court of Appeals in C.A.-G.R. No. 57380-R. This time it is petitioner who has made a complete turnabout from his conformity to the original claim of private respondent. Thus, he insisted that in doing so, the lower court had effected an alteration and/or an amendment of the decisions previously rendered in Civil Cases Nos. 2729 and 5005. The lower court denied the motion.

Petitioner now brings this petition for certiorari alleging grave abuse of discretion on the part of respondent judge amounting to lack or excess of jurisdiction for issuing the order of execution and the resolution denying his motion for reconsideration. To this petition, private respondent was required to file a comment. After both parties had submitted their respective memoranda as required by the Court, the case was deemed submitted for decision in a resolution dated January 19, 1981. In another resolution dated July 4, 1988, the Court required the parties to move in the premises within thirty (30) days from notice to determine that the case has not yet been rendered moot and academic by any supervening event. Petitioner complied by filing a motion for the resolution of this case.

Passing first upon the procedural aspect of this case, private respondent in his comment questions the timeliness of this petition for certiorari, alleging that the filing by petitioner of this petition on July 28, 1980 was clearly beyond the thirty (30) day reglementary period within which to appeal or to file a petition for certiorari from such order of denial.

Certain points have to be clarified regarding the two different modes of review, that of appeal and that of an original action for certiorari, which private respondent in his comment apparently thinks are one and the same. A petition for certiorari under Rule 65 of the Rules of Court is required to be filed only within a reasonable period, no time frame being provided in the Rules within which such petition has to be filed [*Dimayacyac v. Court of Appeals*, G.R. No. 50907, September 27, 1979, 93 SCRA 265; *San Juan v. Cuento*, G.R. No. L-45063, April 15, 1988, 160 SCRA 277.] Moreover, a writ of certiorari is proper only when lack or excess of jurisdiction, or grave abuse of discretion amounting to lack of jurisdiction, is committed by the lower court [Rules of Court, Rule 65, sec. 1.] On the other hand, under the Rules of Court then in force, an appeal had to be taken by a defeated party to the Court of Appeals (provided for in Rule 41) or to the Supreme Court (provided for in Rule 42) within thirty (30) days from notice of the judgment or order [Rules of Court (1964), Rule 41, sec. 3; Rules of Court (1964), Rule 42, sec. 1.] As distinguished from an action for certiorari, errors of judgment and not errors of jurisdiction, are reviewable on appeal [*Commodity Financing Co., Inc. v. Jimenez*, G.R. No. L-31384, June 29, 1979, 91 SCRA 57; *Mutia v. Court of Appeals*, 159 SCRA 328.]

Ordinarily, an order of execution of a final and executory judgment is not appealable because otherwise, there would be no end to a case. However if in the opinion of the defeated party, such order of execution varies the terms of the judgment and does not conform to the essence thereof, or the terms of the judgment allow room for interpretation and the interpretation given by the trial court as contained in its order of execution is wrong, the latter may then appeal the order so that the Appellate Tribunal may pass upon its legality and correctness [*Manaois-Salonga v. Natividad*, G.R. No. L-13927, 107 Phil. 268 (1960); *Socco v. Vda. de Leary*, G.R. No. L-19461, October 31, 1964, 12 SCRA 326; *Nolasco v. Beltran*, G.R. No. 58313, December 8, 1988, 168 SCRA 325.] Although not expressly stated in the comment, we assume that private respondent in questioning the timeliness of the petition holds the view that the present case falls under the exceptional clause, and therefore, the only remedy of petitioner would be to appeal the questioned orders. Since petitioner received a copy of the denial of his motion for reconsideration of the order of execution on June 27, 1980, he had only up to July 27, 1980 within which to appeal. His failure to appeal the said orders consequently rendered the questioned orders final and executory.

The rule that appeal lies to question an order or writ which varies the terms of the decision being executed is not,

however, meant to constitute the appeal as the sole and exclusive remedy in such instances. Any other proceeding appropriate and allowable under the Rules may be pursued by the aggrieved party [Romero, Sr. v. Court of Appeals, G.R. No. L-29659, July 30, 1971, 40 SCRA 172.] Petitioner in this case availed of the remedy of a special civil action of certiorari under Rule 65 of the Rules of Court. He maintained that (1) the award to Rufino Alvero, one of the plaintiffs-appellants in C.A.-G.R. No. 32290-R, of one-half (1/2) of the land of Cipriana, modified the finding of the Court of Appeals, as affirmed by this Court, that only defendants-appellees were entitled to the land of Cipriana; and (2) the allotment to private respondent of 4,099 square meters, an increase from 2,500 square meters, as representing one-fourth (1/4) of the land of Juan, varied the decision of the respondent court in Civil Case No. 5005, as affirmed by the Court of Appeals in C.A.-G.R. No. 57380-R. He claimed that in so doing, the respondent court committed grave abuse of discretion and acted beyond its jurisdiction. This clearly makes a proper case for certiorari which we could pass upon. This petition is thus timely filed, only thirty-one (31) days having lapsed from notice of the assailed orders.

Going now to the merits of the case, we find that in issuing the order of execution and the order denying the motion for reconsideration, the respondent court fully apprehended the import of the decisions rendered on appeal in Civil Cases Nos. 2729 and 5005.

Petitioner would wish this Court to conclude, from the reversal by the Court of Appeals in C.A.-G.R. No. 32290-R of the decision of the lower court which found in favor of plaintiffs-appellees, that the land of Cipriana was thereby adjudicated only to him and to Paula Vda. de Alvero, the defendants-appellants, to the exclusion of Rufino Alvero, one of the plaintiffs-appellees. In support of this contention, petitioner cites the following portion of the Court of Appeals decision:

Conversely, the defendants-appellants having been in possession of the land adversely, continuously and in the concept of owners, they have acquired title through acquisitive prescription, let alone their right through inheritance. [Decision, p. 16; Rollo, p. 22.]

A careful reading of the Court of Appeals decision however will show that the said court did not mean to deprive Rufino Alvero of the shares already occupied by him, equivalent to one-half (1/2) of the land of Cipriana, but instead recognized his ownership over the said portion. Thus, the same court made the categorical finding that “defendants-appellants, together with their co-heir Rufino Alvero, a plaintiff-appellee, have been in possession of the land through their predecessors-in-interest since 1938 exercising attributes of ownership over the same” [Decision, p. 13; Rollo, p. 19.] Moreover, in justifying its finding that defendants-appellants have acquired title to the property over that of the plaintiffs-appellees, the Court of Appeals also stated that:

Therefore, the plaintiffs’ cause of action commenced to ran (sic) from 1940 upon the death of Alejandra Alvero from whom plaintiffs Eustaquio Bayot and Fortunata Alvero-Ramirez derived their title and right of ownership to the land. In the same year, 1940, a verbal partition on said property was made among her nephews namely: Rufino Alvero (one of the plaintiffs-appellees); Norberto Alvero and Mariano Reas. (t.s.n., pp. 110-115, Petilla.) This partition was later on notified (sic) and confirmed in a public instrument of extra-judicial partition dated October 12, 1949 (Exh. B) admitted by plaintiffs-appellees. (par. 6, Complaint.) There is evidence to show that prior to the extrajudicial partition, the parties had already been in possession of the land. [Decision, p. 14; Rollo, p. 20; underscoring supplied.]

It is thus clear from the above-quoted paragraph that in the statement quoted by petitioner, the Court of Appeals was referring only to the plaintiffs-appellees, other than plaintiff-appellee Rufino Alvero, as having been deprived of their right to the land of Cipriana, since Rufino Alvero himself was found to have taken possession of his shares of the land from the time of the death of Alejandra. The Court of Appeals even found the inclusion of Rufino Alvero as one of the plaintiffs-appellees in the case to be so strange as to merit some discussion in the

decision; thus, it theorized that the purpose for Rufino Alvero's joining in the suit was "to deprive the defendants-appellants of their landholdings in the property subject of litigation. And consequently, plaintiffs Fortunata Alvero-Ramirez and Eustaquio Bayot, niece and nephew of the late Alejandra Alvero could also share on the land" [Decision, pp. 12-13; Rollo, pp. 18-19.]

Thus, in allotting 8,196 square meters, which is one-half (1/2) of the land of Cipriana, to Rufino Alvero, the respondent court in its order of execution was merely implementing the decision of the Court of Appeals, as affirmed by this Court in G.R. No. L-28337. It is clear from the foregoing therefore, that no grave abuse of discretion amounting to lack or excess of jurisdiction was committed by respondent court.

As to the controversy regarding the land of Juan, the trial court pegged the one-fourth portion of the land of Juan which private respondent inherited as comprising an area at 2,500 square meters, more or less. This was arrived at on the basis of the area indicated in Tax Declaration No. 10621 in the name of Juan which is one (1) hectare only.

The trial court gave leeway to the possibility that the land of Juan may later be found to be smaller or greater than that indicated in the said tax declaration, which is at best a prima facie evidence of the extent and location of the land, when it added the words "more or less" after the area of 2,500 square meters. The size of the land that is to be allotted to private respondent is therefore dependent upon the size of the land which was originally owned by Juan; and the important part of the decision of the lower court, affirmed by the Court of Appeals in C.A.-G.R. No. 57380-R, is that private respondent is entitled to one-fourth of the land.

Therefore, since the land was later found after the relocation survey to be more than one (1) hectare, then the area comprising the one-fourth portion of the land adjudicated to private respondent would also necessarily be more than just 2,500 square meters. The respondent court did not thereby commit any grave abuse of discretion in adjusting the area allotted to private respondent from 2,500 square meters to 4,099 square meters since the increase in area is merely an implementation of the decision rendered on appeal in Civil Case No. 5005, which adjudicated one-fourth of the land to private respondent.

WHEREFORE, in view of the foregoing, the petition is hereby DISMISSED for lack of merit.

SO ORDERED.

Fernan, C.J., Gutierrez, Jr., and Bidin, JJ., concur.

Feliciano, J., on leave.

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.