

**MARCELO ENRIQUEZ, PETITIONER, VS. HIGINIO B. MACADAEG,
JUDGE OF THE COURT OF FIRST INSTANCE OF CEBU, MELITON
YBURAN, AND THE PHILIPPINE NATIONAL BANK, RESPONDENTS.**

G.R. No. L-2422. September 30, 1949

Ponente: REYES, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/763351c688f3/>

REYES, J.:

This is a petition for a writ of mandamus to compel the respondent judge to dismiss a civil action pending in his court.

The civil action in question is for the recovery of a piece of real property situated in Negros Oriental, the complaint alleging that the said property had been bought by plaintiff at an execution sale but that, notwithstanding the sale, the judgment debtor, as supposed owner of said property, subsequently mortgaged the same to the Philippine National Bank and refused to surrender possession thereof to plaintiff, whereupon, the latter brought suit (Meliton Yburan vs. Marcelo Enriquez and The Philippine National Bank, civil case No. R-552 of the Court of First Instance of Cebu) to have himself declared owner of said property and placed in possession thereof. Before filing their answer, the defendants in that case moved for the dismissal of the complaint on the ground, among others, that, as the action concerned title to and possession of real estate situated in Negros Oriental, venue was improperly laid in the Court of First Instance of Cebu. The motion having been denied, the defendants filed the present petition for mandamus to compel the respondent judge to dismiss the action.

Answering the petition, the respondent judge puts up the defense that the act sought to be ordered involves the exercise of judicial discretion and that petitioner has another adequate remedy, which is by appeal.

Section 3 of Rule 5 of the Rules of Court requires that actions affecting title to or recovery of possession of real property be commenced and tried in the province where the property lies, while paragraph 1 (b) of Rule 8, provides that defendant may, within the time for pleading, file a motion to dismiss the action when "venue is improperly laid." As the action sought to be dismissed affects title to and the redelivery of possession of real property situated in Negros Oriental, it is obvious that the action was improperly brought in the Court of First Instance of Cebu. The motion to dismiss was therefore proper and should have been granted.

But, while the respondent judge committed a manifest error in denying the motion, mandamus is not the proper remedy for correcting that error, for this is not a case where a tribunal "unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office" or "unlawfully excludes another from the use and enjoyment of a right." (Sec. 3, Rule 67, Rules of Court.) It is rather a case where a judge is proceeding in defiance of the Rules of Court by refusing to dismiss an action which should not be maintained in his court. The remedy in such case is prohibition (section 2, Rule 67), and that remedy is available in the present case because the order complained of, being merely of an interlocutory nature, is not appealable.

While the petition is for mandamus, the same may well be treated as one for prohibition by waiving strict adherence to technicalities in the interest of a speedy administration of justice pursuant to section 2, Rule 1, Rules

of Court.

Wherefore, let a writ of prohibition issue, enjoining the respondent judge or his successor from taking cognizance of this case unless it be to dismiss the same in accordance with the Rules. Without costs. So ordered.

Ozaeta, Paras, Feria, Bengzon, Padilla, Tuason, Montemayor, and Torres, JJ., concur.

MORAN, C. J.:

I concur in the result.

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.