

**HIGINO MALAGUM AND TOMAS ORNOPIA, PETITIONERS, VS.
GUILLERMO PABLO, AUXILIARY JUDGE OF THE TWENTIETH
JUDICIAL DISTRICT, NUMERIANO ANDRIN AND ANACLETA LOPEZ,
RESPONDENTS.**

G.R. No. 22332. July 25, 1924

Ponente: OSTRAND, J.

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OSTRAND, J.:

The present case is now before the court upon demurrer to the petition on the ground that it does not state facts sufficient to constitute a cause of action.

The petition is for a writ of mandamus and was filed in this court on April 21, 1924. It alleges, in substance, that in March, 1924, the petitioners appeared as opponents in land registration case No. 164, Court of First Instance of Cebu, in which case the herein respondents Numeriano Andrin and Anacleta Lopez were the applicants for the registration of a parcel of land; that the judge sitting in the case, the Honorable Guillermo Pablo, granted said opponents twenty-four hours within which to present a written opposition and continued the hearing of the case until March 22, 1924; that within the aforesaid period the said opponents presented a written opposition which was not verified under oath; that when the case was again called for hearing the opponents presented an amended opposition in exactly the same language as the previous opposition but verified in the proper form; that in view of the objections of the applicants in said case the judge denied the admission of said amendment and declared the opponents, the herein petitioners, in default; that on March 28, 1924, the said opponents presented a motion asking for a reconsideration of the order declaring them in default; that on the same day the court rendered a decision in said land registration case ordering that the registration of the land there in question be decreed in favor of the applicants; and that on April 7, 1924, the opponents, the herein petitioners, received notice of the order of the court denying their motion for a reconsideration.

On the strength of these allegations the petitioners pray that a writ of mandamus issue ordering the respondent judge to reinstate the opposition of the petitioners in said land registration case No. 164, that he be restrained from taking further action in the case, and that the effects of the decision of March 28, 1924, be suspended.

The demurrer must be sustained. Mandamus will not lie when there is another plain, speedy and adequate remedy, and it is clear that such a remedy existed in the land registration case in question. The petitioners should have taken an exception to the order rejecting their amended opposition or answer and after the denial of their motion for reconsideration of March 28th, could have taken their appeal to this court. They had appeared in the case, had therefore a standing in court, and the order excluding their answer was not a minor order within the meaning of the second sentence of section 141 of the Code of Civil Procedure to which no exception could be taken; it was in effect a final determination of their rights and became appealable as soon as the decision ordering the issuance of the decree in favor of the adverse party was rendered.

It is also obvious that the issuance of a writ of mandamus in the present case would be futile. After the decision in

the land registration case was rendered, no further action on the part of the respondent judge was necessary to make the judgment final and this court has no power by means of an injunction to postpone or interrupt the running of the thirty days' period required for giving the judgment finality.

The demurrer is accordingly sustained; and it being evident that the petition suffers from defects not curable by amendment, an order absolute will be entered dismissing the same without costs. So ordered.

Johnson, Street, Malcolm, Villamor, and Romualdez, JJ., concur.

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