

PABLO TAMAYO, PETITIONER, VS. FRANCISCO E. JOSE, JUDGE OF FIRST INSTANCE OF ORIENTAL MISAMIS, AND NGO BOC, RESPONDENTS.

G.R. No. 46260. April 25, 1939

Ponente: IMPERIAL, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-46260/>

IMPERIAL, J.:

The petitioner commenced this petition for certiorari to annul the order issued by the respondent judge on December 11, 1937, absolving him from the charge of contempt and directing him to deliver within ten days to the other respondent a certain parcel of agricultural land, and to set aside another order of July 6, 1938 in execution of the prior order.

In civil case No. 4325 of the Court of First Instance of the Province of Oriental Misamis, wherein the respondent Ngo Boc was plaintiff and the petitioner was defendant, judgment was rendered in favor of the former declaring him the owner of the parcel of coconut land in suit measuring five hectares more or less, situated in Tabigue, barrio of Odiongan, municipality of Gingo-og, Province of Oriental Misamis, whose boundaries and other descriptions are the following: "North, by the land of Alejandro Ygargo; east, by the land of Silvestre Jumarán; south, by the land of Serapion Borromeo; west, by the land of Jose Ygargo; tax declaration No. 12288; assessed value, P730"; and ordering the petitioner to vacate the land and to pay to the respondent Ngo Boc the sum of P50, by way of damages, plus the costs. This decision became final because no appeal was taken therefrom. When it was sought to be executed, the petitioner refused to yield possession of the land to the respondent Ngo Boc because the sheriff wanted to execute the judgment upon another and different land. Thereupon Ngo Boc filed a motion under section 232 (5) of the Code of Civil Procedure, as amended by Act No. 3170, charging the petitioner with contempt. Passing upon the complaint, the court by order of December 11, 1937, absolved the petitioner, ordering him, however, to deliver the land to Ngo Boc within ten days. The petitioner excepted to the order and asked for a new trial on the ground that it was not supported by the evidence and was contrary to law; and this having been denied he excepted anew and announced his intention to appeal, which appeal was denied by the court on the ground that the order was not appealable it being merely a clarification of an ambiguity in the judgment rendered in the case. Finally on July 6, 1938, an order was issued directing the execution of the prior order. Hence, this petition for certiorari filed by the petitioner.

The petitioner contends that the order of December 11, 1937 is illegal and null and void because it substantially modified the judgment rendered in the case on June 20, 1935, inasmuch as it adjudicates to the respondent Ngo Boc another and different land from that in suit, and that the respondent judge was without jurisdiction and exceeded the same in issuing the said order. The respondent judge justified the issuance of the said order on the ground that the land adjudicated to Ngo Boc by the judgment is that described in the tax declaration No. 12289 because the boundaries set out in the complaint coincide with those of the land described in said tax declaration and not with those of the land described in tax declaration No. 12288, and concluded that the description by boundaries should prevail. We hold that the conclusion thus reached is erroneous and indefensible. The land in

litigation was described in the complaint not only by boundaries or by the names of the adjoining owners, but by the location of the land, the number of the tax declaration, its approximate area and its assessed value. Should the questioned order be executed, the respondent Ngo Boc would be placed in possession of another land situated in Sandayong, which is quite different from Tabigue which is the situs of the land described in the complaint and adjudicated by the judgment, valued at P1,480 which is more than the value of P730 of the adjudicated land.

As the judgment of June 20, 1935 was final, the respondent judge in ordering its execution cannot alter the same substantially by compelling the petitioner to deliver another land different from that described in the complaint and adjudicated in the judgment. The respondent judge was without jurisdiction to issue the order complained of, and this at bottom deprives the petitioner of real property without due process of law in violation of section 1 (1), Article III, of the Constitution.

In view of the foregoing, the orders of December 11, 1937 and July 6, 1938, are annulled, with the costs to the respondent Ngo Boc. So ordered.

Avanceña, C. J., Villa-Real, Diaz, Laurel, Concepcion, and Moran, 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.