

CIPRIANO SEVILLA, PETITIONER, VS. CEFERINO DE LOS SANTOS AND DOMINGO CUENTA, RESPONDENTS.

G.R. No. L-1980. May 25, 1949

Ponente: PARAS, J.

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PARAS, J.:

In an action for illegal detainer filed in the justice of the peace court of Mangatarem, Pangasinan, a decision was rendered in favor of the plaintiff (herein respondent Domingo Cuenta) and against the defendant (herein petitioner Cipriano Sevilla), but no judgment for any rental was awarded. This decision was appealed by the petitioner to the Court of First Instance of Pangasinan wherein respondent Domingo Cuenta moved for the issuance of a writ of preliminary injunction prohibiting the petitioner and his agents from cultivating and planting the parcels of land described in the complaint and from gathering any crop that may exist thereon. This motion was granted and, upon the filing of a bond by the respondent Domingo Cuenta, the corresponding writ of preliminary injunction was issued but, as alleged by herein petitioner, the respondent judge explained that said injunction "does not command the petitioner herein to pull out his house and leave the land."

In the present petition for certiorari, the petitioner alleges that the respondent judge of the Court of First Instance of Pangasinan acted without or in excess of his jurisdiction and with grave abuse of discretion in issuing the above-mentioned writ of injunction.

The petition should be granted. Under section 3 of Rule of Court 72, the court may grant preliminary injunction, in accordance with the provisions of Rule 60, to prevent the defendant from committing further acts of dispossession against the plaintiff; and it was held that said preliminary injunction may be issued only in forcible entry proceedings, but not in an action of unlawful detainer. (Moran, Comments on the Rules of Court, 2nd edition, Vol. II, p. 251, citing *Piit vs. De Lara and Velez*, 58 Phil., 765.)

As the action in the case at bar is one for unlawful detainer originating from the justice of the peace court and retaining the same nature during the pendency of the appeal in the Court of First Instance, the respondent judge had no power to issue the writ of preliminary injunction now complained of.

The petition for certiorari will therefore be, as the same is hereby, granted and the order of the respondent judge of July 21, 1947, entered in civil case No. 9842, as well as the writ of preliminary injunction issued in the same case on September 12, 1947, are set aside. So ordered, with costs against the respondent Domingo Cuenta.

Moran, C. J., Ozaeta, Fera, Pablo, Perfecto, Tuason, Montemayor, and Reyes, JJ., concur.

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