

**MARIANO BEYSA, ET AL., PETITIONERS, VS. COURT OF FIRST
INSTANCE OF CAGAYAN, ET AL., RESPONDENTS.***G.R. No. L-9048. May 11, 1956*

Ponente: REYES, J.B.L., J.

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On July 12, 1954, herein respondents Proceso Sebastian, et al., filed an action for forcible entry against petitioners Mariano Beysa, et al., in the Justice of the Peace Court of Solana, Cagayan (Civil Case No. 56) for the recovery of the possession of a parcel of land located in Finulo, Solana, Cagayan Province. Upon motion of the plaintiffs, the Justice of the Peace of Solana inhibited himself from acting in the case on the ground that he had once been counsel for the defendants, and designated the Justice of the peace of Enrile, Cagayan, to try the same. Upon receipt of the records, the latter notified the parties that the case would be tried by him in the Justice of the Peace Court of Enrile; defendants filed a special appearance objecting to the venue, the land in question being located in the municipality of Solana; but the Justice of the Peace of Enrile insisted in trying the case, notified the parties anew of the date of the trial, issued upon plaintiffs' instance a writ of preliminary injunction enjoining defendants from continuing in the possession of the land, tried the case in the absence of the defendants, and on September 18, 1954, rendered judgment for the plaintiffs.

On October 23, 1954, defendants sued out a writ of certiorari in the Court of First Instance of Cagayan to annul all the proceedings taken by the Justice of the Peace Court of Enrile in Civil Case No. 56 of the Solana Court as having been made without jurisdiction and in grave abuse of discretion. . The Court of First Instance, however, held that the Justice of the Peace Court did not act as charged and dismissed the petition. Wherefore, defendants filed this petition for certiorari before this Court.

The petition must be granted.

The present law on the matter is section 73 of the Judiciary Act of 1948, as amended, which reads:

"SEC. 73.' Auxiliary justice—Qualifications and duties.—The auxiliary justice of the peace shall have the same qualifications and be subject to the same restrictions as the regular justice, and shall perform the duties of said office during any vacancy therein or in case of the absence of the regular justice from the municipality, or of his disability or disqualifications * * *.

In case there is no auxiliary justice of the peace to perform the duties of the regular justice in the case above mentioned the district judge shall designate the nearest justice of the peace of the province to act as justice of the peace in such municipality, town, or place."

Under the above provision, which was taken from sec. 211 of the Administrative Code of 1917, in case the justice of the peace of a town or municipality is disqualified to act in a case and there is no auxiliary justice to take over his duties, it is the district judge who should designate the nearest justice of the peace of the province to act in the municipality or town of the disqualified justice. In other words, the substitute justice shall not hear the case in his own court, but shall act in the very court where the case is pending.

It is true that under section 73 of the old Code of Civil Procedure, where the justice of the peace of a municipal is disqualified and the auxiliary justice is also disqualified or otherwise disabled, "the cause shall be transferred to the nearest justice of the peace of the province who is not disqualified"; and it was pursuant to this rule that the justice of the peace of Solana transferred Civil Case No. 56 to the justice of the peace of Enrile, who tried and decided the case in his own court. However, the rule prescribed by the Code of Civil Procedure has been repealed and superseded by the Judiciary Act of 1948, which was intended to be a complete reenactment of the entire system of substantive law in the field of administration of justice, and which in express terms repealed all laws and rules inconsistent with its provisions (section 99). Significantly, the Judiciary Act, while reenacting the provisions of section 211 of the Administrative Code of 1917 (Act No. 2711), does not make any reference to the rule of sec. 73 of Act No. 190, clearly implying that the latter rule is to be deemed no longer in force (In re Guzman, 73 Phil., 51; Posadas vs. National City Bank, 296 U. S. 497, 80 L. ed. 351).

The case of Valera vs. Tuason, 45 Off. Gaz., No. 9 (Supp.), p. 443, cited by the Court of First Instance of Cagayan as authority for sustaining the action of the justice of the peace of Enrile, is not applicable to this case, because the same was decided before the passage and approval of the Judiciary Act of 1948.

The appointment of the justice of the peace of Enrile by the disqualified justice of Solana to act in Civil Case No. 56 of the latter's court is null and void, for it is the district judge of Cagayan who, under the present law, should designate the nearest justice of the peace of the province to act in the matter; and the proceedings taken by the Enrile judge in his own court are not only illegal for the law requires the substitute judge to act in the municipality where the case is pending but highly irregular, for defendants had the right to have the case tried in the court of proper venue, the Solana court, and were justified in refusing to go to trial in Enrile; and by insisting in hearing the case in Enrile in the absence of defendants, the justice of the peace of Enrile virtually denied them the fundamental right to a day in court.

Wherefore, all proceedings taken by the justice of the peace of Enrile, Cagayan in Civil Case No. 56 of the Justice of the Peace Court of Solana are hereby annulled; and the district judge of Cagayan Province is instructed to designate the nearest justice of the peace of the province to act in said cause. Costs against the private parties respondent. So ordered.

Paras, C. J., Bengzon, Montemayor, Jugo, Bautista Angela, Labrador, Concepcion, and Endencia, JJ., concur.

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