

**ANACLETO PIIT, GAUDENCIO E. PIIT, GELACIO MAGBAGO, AND
BALBINA PIIT, PETITIONERS, VS. VICENTE B. DE LARA, JUSTICE OF
THE PEACE OF CAGAYAN, ORIENTAL MISAMIS, AND CLEOFE VELEZ,
AD...**

G.R. No. 40368. November 16, 1933

Ponente: HULL, J.

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HULL, J.:

Original action for certiorari praying that the writ of preliminary injunction issued by the respondent justice of the peace against petitioners be declared null and void.

When the petition was first presented, we declined to issue the writ on the ground that the Court of First Instance of Oriental Misamis had concurrent jurisdiction, and there was no showing made as to why the writ was presented to this court instead of to the Court of First Instance. After that action was promulgated on September 23, 1933,[1] petitioner asked for reconsideration and made a showing that the Court of First Instance of Oriental Misamis was not open owing to the absence of the judge and that it was impossible to say when a judge would be assigned to that court.

Reconsideration was therefore granted and respondents have filed their answer and brief.

It clearly appears from the record presented that the action in the justice of the peace court is one of unlawful detainer, not forcible entry. The distinction between forcible entry and unlawful detainer as set forth in section 80 of the Code of Civil Procedure is clearly shown in *Medel vs. Militante* (41 Phil., 526). According to Act No. 3764, a justice of the peace may grant preliminary injunction in forcible entry proceedings to prevent the commission of further acts of dispossession, but the statute does not confer jurisdiction on the justice of the peace to grant a preliminary injunction in an action of unlawful detainer. The leading case of *Devesa vs. Arbes* (13 Phil., 273), which has been repeatedly followed, shows that an injunction should not have been issued in this case.

The preliminary injunction issued by the justice of the peace being in excess of his jurisdiction must be declared null and void and a writ of certiorari granted. Costs against respondent De Lara. So ordered.

Avanceña, C. J., Malcolm, Villa-Real, and Imperial, JJ., concur.

[1]Page 457, ante.

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