

TAN PHO AND TAN U, PETITIONERS AND APPELLEES, VS. AMPARO NABLE JOSE, AS GUARDIAN FOR THE PRODIGAL ZACARIAS LICHAUCO, RESPONDENT AND APPELLANT.*G. R. No. 24930. December 31, 1926*

Ponente: JOHNS, J.

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The petition alleges that on July 7, 1913, while the above-named incompetent was not subject to guardianship, he entered into an agreement with your petitioners to lease his one-third interest, together with the third interest of his children, if possible, in a parcel of land in the City of Manila, a copy of which, in the form of a letter from Zacarias Lichauco to petitioner, Tan Pho, in reply to a letter from the latter of date July 5, 1913, is hereunto attached, marked Exhibit A, and made a part of this petition; that on October 14, 1913, and after the said incompetent was returned to guardianship, and for the purpose of carrying out the provisions of Exhibit A, the then guardian of the incompetent, as such, entered into a contract of lease with your petitioners for the period of twenty years, a copy of which is attached to the petition, marked Exhibit B; that on December 1, 1913, the said guardian, as such, executed a contract with your petitioners for the purpose of clarifying the description of the property and of making the same binding upon the heirs and legal representatives of the lessor, a copy of which is attached to the petition, marked Exhibit C; that subsequent to the execution of Exhibits B and C, the Honorable A. S. Crossfield, then Judge of the Court of First Instance of Manila, in charge of probate and guardianship matters, with the full knowledge and approval of all the parties in interest, approved the same by placing on each of said documents, under the seal of the court, the following endorsement:

"Aprobado:

"A. S. CROSSFIELD

"Juez"

That under the provisions of paragraph II of the lease, the lessees undertook to construct the building on the land in question at a cost to them of not less than P52,000; that under the provisions of paragraph IX, it was agreed that upon the expiration of the lease, the buildings and other improvements placed thereon by the lessees should become the sole property of the owners of the land; that relying thereon, the lessees erected the building on the leased land, in compliance with the terms of the lease; that in the accounts of the guardianship for the years 1913 to 1919, inclusive, which were approved by the respective orders of the court, the receipt of the stipulated rentals in the contract of lease, Exhibit B is shown and the approval of said accounts "necessarily involved an approval of the lease under which the payment of said rentals was made;" "that through some error or oversight, no order of this court approving said lease, Exhibits B and C, was ever entered of record in the above entitled cause;" that taking advantage of that fact, Faustino Lichauco, a subsequently appointed guardian of the above-named prodigal brought an action to set aside the lease as being voidable, for the reason that the lease was never judicially approved; that in the Court of First Instance of Manila that action was dismissed,

and upon appeal to the Supreme Court, the lease was there declared to be voidable "by reason of the fact that no order of approval of the execution of said lease by Geronimo Jose, at that time guardian of the said prodigal, was made of record." It is then alleged:

"That the letter of July 7, 1913, to which reference is made in the preceding citation from the said 'decision of the Supreme Court is the same letter of which a copy is hereunto annexed, marked Exhibit A, and made a part hereof; and the contract mentioned in the said decision is the contract executed on behalf of Zacarias Lichauco by his then guardian, Geronimo Jose, evidenced by the copies of said contract hereunto attached, marked Exhibits B and C, and made a part hereof.

"That the Supreme Court in said decision expressly held that all that was necessary to make the said contract of lease valid as regards the estate of the said prodigal Zacarias Lichauco, was the approval of this honorable court.

"That inasmuch as the said prodigal, Zacarias Lichauco, as the Supreme Court has expressly decided in the above- mentioned case, was under a valid and binding obligation, at the time he was subjected to guardianship, to enter into the contract subsequently entered into on his behalf by his guardian, Geronimo Jose, its disaffirmance by the subsequent guardian, Faustino Lichauco, amounts to a breach of a valid and subsisting contract, which, if permitted to continue, will subject the estate of the said prodigal, Zacarias Lichauco, to the payment of heavy damages.

"That the said contract of lease, Exhibits B and C, made by the said Geronimo Jose in execution of the preliminary contract entered into by the said Zacarias Lichauco while competent to contract and obligate himself, is valid and binding, save only for the lacking requisite of the approval of this honorable court.

"Therefore, your petitioners pray that the pending motion of the former guardian, Geronimo Jose, of date October 15, 1913, for the approval of the said lease, Exhibits B and C be granted, and that the said lease be approved by this honorable court."

To this petition, Amparo Nable Jose, as guardian of the prodigal, Zacarias Lichauco, answered and asked the court to deny and dismiss the petition, for the reason that on October 15, 1913, the motion of Geroninio Jose was practically withdrawn and repudiated by Faustino Lichauco, then guardian ad litem of the prodigal, Zacarias Lichauco, and that on September 17, 1920, the said Faustino Lichauco filed a complaint in the Court of First Instance of the City of Manila in which, among other things, he asked for an annulment of the contract, and upon which judgment was rendered by the Supreme Court of the Philippine Islands for the plaintiff and against the defendants, the herein petitioners, and in which case, the defendants' application for a writ of certiorari was denied by the Supreme Court of the United States; for all of the questions raised by the petitioners have already been adversely decided by the Supreme Court of the Philippine Islands, and that all of such questions are now res judicata.

Upon such issues, the lower court granted the motion as prayed for in the petition, and rendered a judgment purporting to affirm and ratify the original lease, which this court declared void for want of execution.

From that decision the respondent appeals and assigns the following errors:

"1. The trial court erred in holding that the filing of the complaint on September 17, 1920, in civil case No. 18884 of the Court of First Instance of the City of Manila, and G. R. No. 19512 of this Honorable Supreme Court, entitled Faustino Lichauco, etc. vs. Tan Pho et al., by Faustino Lichauco, as guardian ad litem for the incompetent Zacarias Lichauco et al., for the annulment of the contract of lease dated October 14, 1913, executed in favor of Tan Pho by Geronimo Jose, as guardian for the incompetent Zacarias Lichauco, and marked as Exhibit B in this case, was not a withdrawal or repudiation of the alleged motion filed in the Court of First Instance of the City of Manila, on October 15, 1913, by the said Geronimo Jose, as guardian for said

Zacarias Lichauco, asking for the judicial approval of the said contract of lease marked as Exhibit B and the amplification thereof marked as Exhibit C.

"2. The trial court further erred in granting judicial approval to said documents marked Exhibits B and C, by virtue of the petition filed by the herein petitioners and appellees dated April 22, 1925, invoking said motion of Geronimo Jose, dated October 15, 1913, notwithstanding the fact that the said lease contract marked as Exhibit B had been declared null and void by the Supreme Court of these Islands, on November 22, 1923, with reference to the excess over the period of six (6) years, in said civil case No. 18884 of the Court of First Instance of Manila, and G. R. No. 19512 of this Honorable Supreme Court, entitled Faustino Lichauco, etc. vs. Tan Pho et al."

JOHNS, J.:

The real question on this appeal is the legal force and effect of the decision of this court rendered on the former appeal of Faustino Lichauco, as guardian ad litem of the prodigal, Zacarias Lichauco, in which the petitioners here were the defendants there. The sole purpose and intent of that proceeding was to have the court declare the lease then in question null and void as to the prodigal, Zacarias Lichauco.

Upon the former appeal of that case, this court held:[1]

"It is, therefore, our conclusion that while the lease in question could have been approved by the trial court, yet such an approval was not obtained either in the opportune time or afterwards, inasmuch as the nunc pro tunc order of approval, which is implied in the decision rendered, is not valid, there being no sufficient legal basis therefor."

And:

"In the first place the contract in question remains intact and valid, so far as Galo Lichauco is concerned, who did not join as party plaintiff, but as party defendant, with Tan Pho, and to whom the cause of the nullity of the contract, as regards his colessors, the plaintiffs, does not apply. The contract is void only in so far as the incapacitated Zacarias Lichauco and the minors Luis and Julita Lichauco are concerned.

"That the contract of lease here in question, executed on October 14, 1913 by and between Galo Lichauco and the respective guardians of Zacarias Lichauco and the minors Luis and Julita Lichauco, on the one hand, and Tan Pho on the other, is null, as against the plaintiffs and this declaration of partial nullity shall have retroactive effects from September 17, 1920, the date of the filing of the complaint for nullity."

The question presented is whether the lease in question, which was declared null and void for want of execution by a final judgment of this court, can now be made legal and valid in a proceeding for that purpose between the same parties brought in the Court of First Instance. That original suit was brought by the guardian of the prodigal for the specific purpose of having the lease in question declared null and void for want of execution, and in that proceeding, this court held that the contract of lease now in question "is null, as against the plaintiffs and this declaration of partial nullity shall have retroactive effects from September 17, 1920, the date of the filing of the complaint for nullity"

The petitioners in the instant case pray "that the pending motion of the former guardian, Geronimo Jose, of date October 15, 1913, for the approval of the said lease, Exhibits B and C be granted," and that the lease be now approved by the court. That is to say, that the petitioners in this proceeding now seek to have granted and approved the alleged petition of the former guardian, Geronimo Jose, made on October 15, 1913, and that is what the lower court did.

The appellant contends that the original petition of Geronimo Jose of October 15, 1913, for the approval of the

lease ceased to be of any legal force or effect September 17, 1920, when the then guardian of the prodigal brought an original suit to have the lease now in question declared null and void for want of execution, and that it is especially true, and, in particular, after the rendition of the final decree by this court in the former proceeding.

The real question involved in that proceeding was the validity of the lease. The then guardian claimed and asserted that it was void. The petitioners in the instant case, who were the defendants in that case, contended that the lease was valid. At no time during that litigation or at any previous time was any effort or attempt made by the petitioners to have the lease validated by an order of the court. The legal force and effect of the filing of the original suit by Faustino Lichauco, as guardian of the prodigal, on September 17, 1920, was to nullify, set aside and rescind the alleged motion of Geronimo Jose made on October 15, 1913, for the approval of the lease.

In the final analysis, the fact remains, as this court held in its former decision, that the lease now in question was never approved by any court until after the rendition of the final judgment of this court, to the effect that the lease was null and void for want of execution as of September 17, 1920, the date upon which the original complaint was filed. If, as this court then held, the lease was null and void as of September 17, 1920, upon what legal principle can it now be made a valid lease as of October 15, 1913, upon the alleged petition of the former guardian asking for its approval as of that date? It may be that at any time prior to the filing of the original suit by Faustino Lichauco, as guardian, or even before the final decision in that suit, that upon a proper showing, the court would have had the legal right to have approved the lease on the strength of the petition of the former guardian as of October 15, 1913. Be that as it may, after a final decree was rendered in that suit, which involved the same subject-matter as this suit, and which was between the same parties now before this court, the power to approve the lease based upon the petition of the former guardian then ceased to exist, and was no longer of any legal force or effect. The question involved in the former suit was the validity of the same lease which is now in dispute in this suit, and it was held by this court that the lease was null and void.

Petitioners say:

"It is incontestable that a guardian ad litem of an incompetent person may not withdraw or repudiate a motion filed by the general guardian of such incompetent in the guardianship proceedings." That would be especially true if the motion had been acted upon and approved by the court, which is a condition precedent for the execution of a valid lease of real property for twenty years by a person who is under guardianship. Any other construction would nullify the statute, which requires such approval by the court.

In an able and adroit brief, attorneys for petitioners vigorously contend that the final judgment of this court in the former suit is not res judicata upon the real question now involved in this suit.

Section 307 of the Code of Civil Procedure provides:

"That only is deemed to have been adjudged in a former judgment which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto."

It is admitted that the parties are the same in each proceeding, and that they are litigating in the same capacity, and that the land now sought to be leased is the identical land involved in the former suit.

In their brief, petitioners' counsel say:

"A former judgment between the same parties is conclusive as to all matters actually adjudicated and as to all other matters which might have been adjudicated; but it is obvious that in the former action the question of the validity of the lease after formal judicial approval could not have been litigated, because that element was then lacking." And that:

"In the first case it was the non-existence of the fact of judicial sanction in the form required which led to the decision unfavorable to the lessees; as matters now stand, this judicial sanction has been granted in the form required, and therefore a new legal situation has arisen based, not upon a fact merely evidentiary of the facts in issue in the former litigation, but upon a subsequently occurring, ultimate, provable fact constituting one of the essential elements of the contract as now relied upon."

Upon those points, they cite and rely upon the note in 39 L. R. A. [N. S.], 974; *Peck vs. Easton* (74 Conn., 456; 51 Atl., 134); *Naftzger vs. Gregg* (71 Pac. [Cal.], 757) ; *Utter vs. Franklin* (172 U. S., 416; 43 Law. ed., 498); *Erskine vs. Steele County* (87 Fed., 630) ; *Gaynor vs. Village of Port Chester* (230 N. Y., 210; 179 N. E., 657); *Schneck vs. City of Jeffersonville* (152 Ind., 204; 52 N. E., 212); *Worley vs. Idleman* (285 111., 214; 120 N. E., 472; 203 U. S., 106; 51 Law. ed., 109).

All of the authorities cited are good law, and if the decisions of the Supreme Court of the United States above cited involved the same legal principles and were founded upon the same state of facts, they would be binding upon, followed, approved and applied to this case. But in the final analysis, the facts are very different.

Counsel have not cited any case, and we apprehend that no decision will ever be found upon the admitted facts in this case, holding that where a final judgment has been rendered by the Supreme Court that a lease of land by a person under guardianship was void for want of execution, that the lower court can then, on motion of the lessee, validate the lease over the protest and objection of the guardian of the lessor after the rendition of such final judgment by the Supreme Court.

The alleged motion made by the guardian on October 15, 1913, was never acted upon or approved by any court until after the rendition of the final decree in this court, and the legal effect of the decree in the original suit was to revoke and rescind the motion made on October 15, 1913, by the then guardian to have the court approve and ratify the lease. In other words, at the time the lower court made its order approving the lease as of October 15, 1913, that motion was then legally revoked and rescinded, and there was nothing then before the court upon which it could approve the lease.

For such reasons, the judgment of the lower court is reversed, with costs in favor of the appellant. So ordered.

Avanceña, C. J., Street, Villamor, Ostrand, and Villa-Real, JJ., concur.

[1] *Lichauco vs. Tan Pho*, G. R. No. 19512, promulgated November 22, 1923, not reported.

DISSENTING

ROMUALDEZ, J.,

I think that there is sufficient ground for affirming the judgment appealed from.

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