

SERAFIN GAMBOA, PETITIONER, VS. JOSE LOPEZ VITO, JUDGE OF FIRST INSTANCE OF OCCIDENTAL NEGROS, AND DEMETRIO GAMBOA, AS GUARDIAN OF EULALIO LOPEZ, RESPONDENTS

G.R. No. 44750, December 03, 1935

Ponente: IMPERIAL, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-44750/>

IMPERIAL, J.:

This petition for a writ of certiorari and preliminary injunction seeks to set aside and annul the respondent judge's order of November 7, 1935, in guardianship case No. 5359 of the Court of First Instance of Occidental Negros, requiring the petitioner to return and deliver to the guardian, the other respondent, within ten (10) days, the portions of the Hacienda Macamig in his possession and thereafter to desist from taking possession of the other portions of said hacienda while the lessee Glicerio Montinola gathered his sugar cane crop planted therein, with the warning that In case of noncompliance therewith, he would be imprisoned in accordance with the provisions of sections 610 and 611 of the Code of Civil Procedure.

The petition alleges, among other things, that the respondent Demetrio Gamboa, as guardian of the minor Eulalio Lopez, obtained from the petitioner a loan of P2,500, securing it by a mortgage on the Hacienda Macamig which was approved by the court and registered in accordance with law; that after the constitution of the mortgage, said respondent leased said hacienda to the petitioner but the contract entered into did not have the previous approval of the court; that the contract of lease was noted but not registered in the registry; that upon the suggestion of the attorney for said respondent the petitioner filed a petition with the court offering to lease the hacienda for the stipulated period of six (6) years and the lessee Glicerio Montinola and Gonzalo Junsay likewise submitted propositions to lease said hacienda; that on October 17, 1935, the court, acting on the lease offers, chose that of Gonzalo Junsay; that the petitioner excepted to the order entered therein, announced his intention to appeal therefrom and perfected his appeal; that the petitioner, with the guardian's consent but without the knowledge or permission of the court, took possession of certain portions of the hacienda covering an area of about 25 hectares, from which Glicerio Montinola had already gathered his sugar cane crop; that on November 7, 1935, the respondent judge entered the order the annulment of which is sought, directing the petitioner to return to the guardian, within ten (10) days, the portions of the hacienda in his possession and to desist from taking possession of the other portions to be abandoned by Glicerio Montinola, he having already gathered his sugar cane crop, with the warning that in case of noncompliance therewith he would be proceeded against in accordance with the provisions of sections 610 and 611 of the Code of Civil Procedure, and that the petitioner filed a motion for reconsideration of said order, which was denied.

The petitioner contends that the respondent judge had no jurisdiction to disapprove the contract of lease entered into between him and the respondent guardian because the term thereof did not exceed six (6) years, nor had he jurisdiction to enter the order of November 7, 1935; and claims that, this latter order being unappealable, he has no other adequate remedy in the ordinary course of the law.

In the order of November 7, 1935, the respondent judge alleges as his reason for disapproving the petitioner's lease offer that article 1548 of the Civil Code is not applicable in this case because the order of October 20, 1934, authorizing the respondent guardian to lease the hacienda, expressly provided that the contract to be entered into by him is subject to judicial approval. Without anticipating whether the respondent guardian could enter into a valid contract of lease for six (6) years without the authority or approval of the court having cognizance of the guardianship, we hold that the respondent judge 'had jurisdiction to pass upon the petitioner's application offer whose purpose was to secure judicial approval of his contract of lease already executed. The leasing of a realty belonging to the guardianship of a minor forms part of the acts of administration of the guardian who, in said administration, is subject to the direction, supervision and jurisdiction of the court having cognizance of the guardianship (sees. 55,1 and 555 [3] of the Code of Civil Procedure).

The circumstance that the petitioner is in possession of certain portions of the hacienda under his contract of lease with the respondent guardian, does not alter the aspect of the case or deprive the respondent judge of his jurisdiction to pass upon the lease offers and to approve one of them.

We are of the opinion that the order of November 7, 1935, is appealable because it finally determines the right relied upon by the petitioner under the contract of lease to retain possession of the portions of the hacienda delivered to him by the respondent guardian and to take possession of the other portions that were to be vacated or abandoned by the present lessee. Inasmuch as said order is appealable and the respondent judge had jurisdiction and did not exceed the same in entering it, neither the writ of certiorari nor the preliminary injunction applied for lies. (Sees. 217 and 166, Code of Civil Procedure.)

Neither does the warning in the order, that the petitioner would be imprisoned in case he failed to comply therewith, alter the merits of the case nor confer upon him a better right to the remedies sought by him. Were the order appealed, undoubtedly the petitioner would not be imprisoned until this court had finally determined its legality.

Wherefore, the petition is dismissed, with costs to the petitioner. So ordered.

Malcolm, Villa-Real, Butte, and Goddard, JJ., concur.

Petition dismissed.

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.