

IN THE MATTER OF THE GUARDIANSHIP OF THE INCOMPETENT EULALIO LOPEZ. DEMETRIO GAMBOA, GUARDIAN AND APPELLEE, VS. SERAFIN GAMBOA, OPPOSITOR AND APPELLANT.

G.R. No. 45121. May 31, 1939

Ponente: DIAZ, J.

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DIAZ, J.:

The guardianship of the incompetent Eulalio Lopez has been the owner long before the year 1932 of the hacienda known as "Makamig", located in the municipality of Silay, Province of Occidental Negros, and formed by the lands identified in the cadastre of that municipality as lots Nos. 662 and 686. In 1934 it was leased for three years beginning with the 1932-1933 crop year to Glicerio Montinola.

As the guardianship was in need of funds to meet certain unpaid obligations, the guardian petitioned and obtained from the Court of First Instance of Occidental Negros which had control of the guardianship proceedings, authority to negotiate a loan which may not exceed P3,000, encumbering therefore by way of second mortgage the hacienda aforementioned which was at the time already subject to a previous one in favor of the spouses Albino Jison and Dolores Lopez de Jison.

Acting thereafter in accordance with the authority which had been granted him, the guardian obtained a loan of P2,500 from Serafin Gamboa, his own brother, the two agreeing that said loan would earn interest at 12 per cent per annum which would be payable within the period of two years to be counted from October 16, 1934. It was on this date just mentioned when the guardian executed the corresponding deed of second mortgage in favor of his aforesaid brother Serafin Gamboa. The Court of First Instance of Occidental Negros to which the deed referred to was presented one day after for its approval, approved it on October 20, 1934, and in doing so expressly authorized the guardian—using its own words—"to give in lease the said hacienda Makamig to any person or entity which offers the best conditions, the deed which may be executed to be submitted to this court for proper action."

Five days later, the guardian leased the hacienda in question to Serafin Gamboa himself from whom he had obtained the loan of P2,500, the two agreeing at the time that the duration of the lease would be six years to begin from the 1936-1937 harvest and that the rent would be 500 piculs of centrifugal sugar per year. This lease was set forth in a public instrument executed on October 25, 1934, which was not, however, presented for registration in the registry of property until July 23, 1935. In that deed the guardian authorized the lessee to take possession of the unoccupied portions of the hacienda beginning with the month of July, 1935.

Having been informed of the new lease, the prior lessee, Glicerio Montinola, filed with the court on November 21, 1934 a motion praying that he be allowed to continue leasing the hacienda for another three years, alleging that he had invested therein sufficient money to improve it and proposing conditions which, he believed, were better than those offered by Serafin Gamboa. To influence the court further in his favor, he made it understand that if the guardian had given the aforesaid new lease to Serafin Gamboa it was because the latter is the former's brother. On November 24, 1934 the guardian opposed Montinola's motion, contending that up to then Montinola had not

submitted to him any lease proposal; that if the one which he was contemplating to submit be of the same terms and conditions as his lease, under which he would continue paying the same rent that he had been paying until then and which was much smaller than that offered by Serafin Gamboa, the guardianship would be greatly prejudiced; that Montinola had no reason to complain of having made improvements on the hacienda because he well knew from his very contract of lease that at the expiration of the time therein agreed upon, whatever improvement he might have introduced would pass to the ownership of the guardianship; that he owed rents in arrears in the amount of P4,181.81; that the offer of Serafin Gamboa which was already accepted, was also to give 12 per cent of the harvest, similar to what Montinola now offers the court; and that in addition to this fact, he bound himself to pay the corresponding realty tax on the hacienda. In reply to all the foregoing, Montinola absolutely denied it and added that he was ready to offer the same conditions as those of Serafin Gamboa. While the controversy was at this stage, Serafin Gamboa intervened, and in his complaint dated January 19, 1935 he prayed the court to confirm his right to lease the hacienda in question in consideration of the fact that he had effectively helped the guardianship out of its difficulties, giving it a loan of P2,500, without which the Government, according to him, would have confiscated the hacienda by reason of delay in the payment of taxes owing by the guardianship. Things were in this state, when Gonzalo Junsay intervened in the case, offering to take the hacienda in lease for four years on August 14, 1935, but with the option of extending the lease for another three years, and binding himself to give 15½ of the entire crop which may be raised on the hacienda, and to pay all the obligations which may encumber it, provided that whatever he may pay in this regard should be reimbursed him thereafter by the guardianship or by the legal representative of the incompetent Eulalio Lopez.

In view of the offers submitted by the three and by three others who desired to hold in lease the hacienda "Makamig", the guardian, wishing to show that he had no preference whatever either for his brother, Serafin Gamboa, or for any other, placed all of the aforesaid offers under the consideration of the court, although he recommended that the offer of Gonzalo Junsay be accepted for being the best in his opinion. Serafin Gamboa opposed the foregoing recommendation of the guardian, contending that the contract of lease he had entered into with the latter on October 25, 1934 was valid, efficacious and binding on the guardianship, for the reason that in leases the duration of which does not exceed six (6) years as in the one given to him, judicial approval is not indispensable for their validity.

The court resolving the question as presented by the guardian, Gonzalo Junsay and Serafin Gamboa, directed through its order of October 17, 1935 that the lease be awarded to Gonzalo Junsay; and it found at the same time that the contract of lease executed by the guardian in favor of Serafin Gamboa was invalid because it was not approved by it. It further directed through its order of November 7, 1935 the portions of the hacienda in question of which Serafin Gamboa had taken possession by virtue of the terms of the contract of lease of October 25, 1934 referred to, should be by him delivered to the guardian under pain of contempt, within the nonextendible period of ten days.

From the two aforementioned orders dated October 17 and November 7, 1935, of the Court of First Instance of Occidental Negros, Serafin Gamboa took an appeal on the ground that said court committed the various errors which he assigns in his brief.

The question raised by the appellant through the several errors which he attributes to the lower court in his brief, may be reduced to the following:

- Is the contract of lease of the hacienda in question entered into between the guardian of the incompetent Eulalio Lopez and Serafin Gamboa on October 25, 1934, valid, efficacious and, therefore, binding on the parties by whom it was executed?
- Upon the assumption that the contract referred to is invalid, could the lower court declare it to be so in these

same guardianship proceedings without the prior and express institution of a separate case where a pronouncement to that effect may be made?

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If the contract of lease of the hacienda under consideration between the guardian of the incompetent Lopez and the appellant is valid, could the lease proposal made afterwards by Gonzalo Junsay be accepted solely because it was apparently better than the appellant's?

- We must first of all observe that in the contract of lease between the guardian and Serafin Gamboa (Exhibit I) there is nothing stipulated with respect to the fact that the latter, as lessee, should advance the income or rent for three or more years, or that said contract should be recorded in the registry of property. All that appears in regard to this last point is an answer given by Serafin Gamboa to a question which had been put to him the following: "you just attend to the registration of this deed, and I shall take care of asking the approval of the court." This innocuous answer does not suggest that there had been in fact an agreement to have the contract of lease that as a part of prudence, Serafin Gamboa should have it inscribed, but without saying why and when he should do so. On the other hand, it does not appear that he (Serafin Gamboa) accepted the suggestion on that very occasion. It therefore cannot be said that he failed to comply with the indispensable requirement to record the contract in dispute to give it validity, for the reason that the contracts of lease which, by their very nature, must be recorded, are only those covering immovable property which are for a period longer than six years, or those in which the rents for three or more years may have been advanced, or those in which, none of the foregoing conditions being present, it has been expressly agreed by the parties that they should be recorded. (Art. 2 of the Mortgage Law.) Substantially this is also what article 1548 of the Civil Code, which is of the following tenor says:

"No lease for a term of more than six years shall be made by the husband with respect to the property of this wife, by the father with respect to that of his children, by the guardian with respect to that of his minor ward, or in default of special power, by a manager of property." The quoted provisions authorize the statement that a contract of lease for a period of less than six years and without the other two conditions above-mentioned, is but a mere act of administration for whose validity judicial approval is not necessary. We so held in the cases of Tipton vs. Andueza (5 Phil., 477); Enriquez vs. A. S. Watson Co. (6 Phil., 84; 22 Phil., 623); Rodriguez vs. Borromeo (43 Phil., 479); Tan Pho and Tan U vs. Nable Jose (40 Phil., 828); and Lichauco vs. Tan Pho (51 Phil., 862).

Nevertheless, even if it be conceded that inscription was an indispensable requirement in the contract at bar, said requirement in the contract at bar, said requirement is present and was complied with on July 23, 1935 when Serafin Gamboa presented said contract to the registrar of property for its annotation in the corresponding book. (Exhibits 2 and 1).

Moreover, judicial approval was not necessary because the contract of lease in question was entered into precisely by virtue of the express authority which the court had granted to the guardian, through its aforementioned order of October 20, 1934. The phrase "the deed which may be executed to be submitted to this court for proper action", which was used in said order, does not mean that once the contract was formally effected there arose the duty to submit it to the court for its approval. That approval was not necessary not only for the reason already given, that is, that the contract had been expressly authorized; but also because the duration of the contract of lease was not more than six years. "For proper action" means no more than that the deed or contract should be attached to the record for purposes of reference or information when necessary.

It is true that under the provisions of section 569 of Act No. 190, as amended by the Act No. 2640, burdens or charges may not be made on property under guardianship without the knowledge and leave of the court. It is however, likewise true that this is what has been done in the case at bar, inasmuch as the hacienda "Makamig"

was leased to Serafin Gamboa precisely upon the express authority granted the guardian by the court. Besides, it is also a fact that nowhere in said law is it declared that after the performance of what has been authorized it should again be submitted to the court for its approval. The leasing of an immovable for six years or less is furthermore not a charge or burden, since the Civil Code considered only the lease for a longer period to be so. For this reason, it is said in a resolution of the Department of Registries of Spain from which our Code is derived, that the recording of a contract of lease, which contains all the requirements of article 2 of the Mortgage Law, is a real burden whereby the owner of an estate limits, to the prejudice of the subsequent owners, the free exercise of one of the rights of dominion; and in another it is affirmed that the Mortgage Law has made into a truly real right the lease having all the necessary conditions for its inscription. (10 Manresa, Civil Code, 4th edition, p. 426.)

As the aforementioned section 569 of Act No. 190) in referring to charges and burdens, is that leases of immovables for a period of less than six years are not thus considered.

Again, it is unnecessary to hold as without merit the guardian's other argument that the order of October 17, 1935 which finds the contract of lease in favor of Serafin Gamboa as illegal, and the lease granted to Gonzalo Junsay as valid, on the ground that the conditions offered by the latter are better, because in order to determine that question of whether or not said conditions are better than those proposed by Serafin Gamboa, the element of time or the occasion on which they were offered must be taken into account. Those of Junsay were offered on August 14, 1935, while the contract in favor of Serafin Gamboa was perfected on October 25, 1934. In such cases, the best offer is not that which contains better conditions, made after the occasion when it should have been made; but that given on that occasion, which is found to be advantageous after comparison with others made at the same time. Both offers, Serafin Gamboa's and Gonzalo Junsay's, and even those of others who also wanted to lease the hacienda "Makamig", should have been given on the same occasion, in order that one may be then able to determine, considering all the circumstances, which of them was the best. When Serafin Gamboa made his offer, no other outbid him.

In view of all the reasons hereinabove stated, we decide the first question in the affirmative; in other words, we hold valid, efficacious and binding upon the guardianship the contract of lease in favor of Serafin Gamboa.

- We believe the lower court clearly erred in holding in these same guardianship proceedings, without a separate case having been commenced, that the contract of lease in question is void because it lacks judicial approval. Contracts are presumed valid until they are declared to be otherwise; and this can only be done by bringing an ordinary action in a separate case having been commenced, that the contract of lease in question is void because it lacks judicial approval. Contracts are presumed valid until they are declared to be otherwise; and this can only be done by bringing an ordinary action in a separate case wherein the question may be determined because Chapter XXVII of Act No. 190 dealing with guardianships, does not confer authority on the court to concern itself therewith or, more exactly, to decide it. What has been held in the cases of Guzman vs. Anog and Anog (37 Phil., 61); Alafritz vs. Mina (28 Phil., 137); Llacer vs. Muñoz de Bustillo and Achaval (12 Phil., 328); and Hagans vs. Wislizenus (42 Phil., 880), is, by reason of its close analogy to the case at bar, of great and timely application thereto.

- Since the contract of lease entered into between the guardian and the appellant Serafin Gamboa is valid as we have held, it was improper to accept the offer of Gonzalo Junsay, which was only made nine months after said contract was perfected and more than one month after it was recorded in the registry of property. This is the more evident when it is remembered that the appellant was already then in possession of several portions of the leased hacienda, even if the fact that the contract was recorded in the registry of property, which adds weight to the contention of the appellant by virtue of sections 51 and 70 of Act No. 496, were disregarded.

- The other questions are of secondary importance and are furthermore a consequence of those already decided. No necessity exists for us to deal with them, for after all they do not and cannot change the conclusions herein set forth.

Wherefore, the orders appealed from are reversed, and the contract of lease in favor of the appellant is declared valid, efficacious and binding, with costs against the appellee. So ordered.

Villa-Real, Imperial, and Moran, JJ., concur.

Concepcion, J., see dissenting opinion.

Avanceña and Laurel, JJ., concurs in the dissenting opinion of J. Concepcion.

DISSENTING OPINION

CONCEPCION, J.:

I dissent from the foregoing decision on the ground that since the court ordered the guardian, upon authorizing him to lease the hacienda "Makamig", to submit to it the deed which may be executed "for proper action", and as the guardian failed to submit the deed of lease of the aforementioned hacienda which he executed in favor of Serafin Gamboa for a period of six years, said contract is void.

The authority granted the guardian to lease the hacienda "Makamig" to any person or entity which may offer the best conditions, imposed upon the guardian the duty to submit the deed for the approval of the court. This is what the words "for proper action", used in the order of the court, mean and they could not mean anything else.

The order of the court cannot be understood to say that upon the execution of the contract, the deed should be attached to the record of the guardianship proceedings, as the majority have understood it, for the reason that the mere attaching of the deed of lease to the record of the guardianship proceedings would fulfill no purpose or end.

The approval of the court was an indispensable requirement in this case in order that the contract of lease might have effect, for the simple reason that the guardian had not submitted to the court the terms or conditions under which he would lease the hacienda "Makamig". If this had been the case, there would certainly be no need for the approval of the court as long as the guardian kept himself, in the execution of the contract, within the terms and conditions which he should have submitted to the court.

Nevertheless, the authorization given by the court merely says that the guardian may lease the hacienda "Makamig" to any person or entity which may offer the best conditions. It is not the guardian who should determine whether or not the conditions which an applicant for the lease may offer, are the best; but the court itself. And it cannot be said that the leasing of an immovable for a period of six years is a simple act of administration. It is not, in view of the circumstances of the case. The previous lease was only for three years. A lease for more than six years, recorded in the registry or property, is considered as an encumbrance; the lease in question is for six years so that it has reached the limit beyond which, the lease would be considered an encumbrance.

In the case at bar, however, whether or not the lease under consideration is an encumbrance is immaterial to the resolution of the question involved in this appeal. The fact is that the court required that the deed of lease be submitted to it for its approval, and this has not been complied with. Accordingly, the order of October 17, 1933 which found void the lease executed by the guardian in favor of Serafin Gamboa, was entirely justified.

I dissent likewise from the majority in so far as they hold that the court erred in finding the aforesaid contract void

in these same guardianship proceedings, despite the fact that no separate case has been brought. I humbly believe that, if in the guardianship proceedings the court has jurisdiction to approve the contract of lease of the land belonging to the guardianship, it will also have the power to disapprove said contract. I am of the opinion that it would be against the law to hold that the jurisdiction of the court to declare void the contract of lease in question, the enforcement of which has not yet even begun, must have to depend upon the decision of another, or the same court, in a separate case through the bringing of a lawsuit for that purpose.

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