

MAMERTO FERRARIS, PETITIONER, VS. SOTERO RODAS, JUDGE OF FIRST INSTANCE OF OCCIDENTAL NEGROS, AND VICENTE FERRARIS, RESPONDENTS.

G.R. No. 46021. June 27, 1938

Ponente: AVANCEÑA, C.J.

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AVANCEÑA, C.J.:

In the testamentary proceedings of the deceased Victorio Ferraris, case No. 7054 of the Court of First Instance of Occidental Negros the administratrix leased the participation of the estate in the hacienda Talab-an for a period of three years to Mamerto Ferraris. The contract of lease was registered on August 10, 1937. On November 10, of the same year, Vicente "Ferraris applied for the lease of the same participation in the hacienda Talab-an, which application was opposed by the administratrix as she had already leased said participation to Mamerto Ferraris. On January 15, of the following year, 1938, the court without giving the opposition an opportunity to adduce evidence in its favor, issued an order of even date leasing one-half of the hacienda Talab-an to Vicente Ferraris.

This petition for certiorari is filed to declare null and void the order of the court of January 15, 1933 on the allegation that the court lacked jurisdiction to issue said order.

It is not disputed that the lease of the participation of the estate in the hacienda Talab-an, executed by the administratrix, is legal, as it is in fact, because the lease being a mere act of administration, the administratrix could alone legally enter into such a contract with Mamerto Ferraris. If such is the case, irrespective of whether or not the court had jurisdiction to issue said order, it is obvious that, if it had such jurisdiction, it committed an abuse thereof by going against the legal effects of its lease validly and duly entered into by the administratrix with Mamerto Ferraris, without said lease having been previously declared void through proper proceedings.

The order of the court of January 15, 1938 is hereby declared void with costs to the respondent Vicente Ferraris. So ordered.

Villa-Real, Abad Santos, Imperial, Diaz, Laurel, and Concepcion, JJ., concur.

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