

## **GUARDIANSHIP OF THE MINORS JOSEFINA AND SOFIA BIRONDO. MARCOS J. ROTEA, PETITIONER AND APPELLEE, VS. FRANCISCA DELUPIO, GUARDIAN OF THE MINORS JOSEFINA AND SOFIA BIRONDO, OPPOSI...**

*G.R. No. 45310. April 14, 1939*

Ponente: VILLA-REAL, J.

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### **VILLA-REAL, J.:**

On October 15, 1934, Simplicio Birondo, father of the minors Josefina and Sofia, surnamed Birondo, entrusted to attorney Marcos J. Rotea, petitioner and appellee herein, the matter of obtaining the annulment of a sale made on June 6, 1931, by the mother-in-law of said Simplicio Birondo, named Francisca Delupio, in favor of Fabian Franco, and the issuance of a Torrens certificate of title of a piece of land known as lot No. 1023 of the Hacienda Piedad, Baesa, Caloocan, Rizal, the right to buy the same having been inherited by said minors from their deceased mother Beatriz Bartolome and its ownership later acquired by them from the Government by purchase. For the professional services to be rendered by said attorney Marcos J. Rotea, Simplicio Birondo bound himself to convey to the former one third of said land, which would be taken from the uncultivated portion near the Novaliches-Manila provincial road, all the incidental expenses, including those for the issuance of the certificate of title in the name of said two minors, to be for the account of said attorney.

In compliance with said agreement, attorney Marcos J. Rotea took the necessary steps to have the Bureau of Lands disapprove the aforesaid sale made by Francisca Delupio in favor of Fabian Franco, in which he was successful, and he was able to have certificate of title No. 27823 of the office of the register of deeds of Rizal issued in the name of Simplicio Birondo's minor daughters named Josefina and Sofia.

Moreover, said attorney Marcos J. Rotea prepared the complaint and appeared in civil case No. 6177 of the Court of First Instance of Rizal in the name and representation of Simplicio Birondo and his said minor daughters, as well as in the name of Simplicio Birondo alone in civil case No. 6191 of the same court.

On April 25, 1936, the Court of First Instance of Rizal, acceding to attorney Marcos J. Rotea's petition of April 17, 1936, for the notation of his right of retention over one third of the aforesaid lot, issued an order directing the register of deeds of the province of Rizal to note said right of retention over one third of the land pertaining to the guardianship and covered by the original certificate of title No. 27823 issued by said office.

On May 9, 1936, Francisca Delupio, as guardian of the persons and properties of the minors Josefina and Sofia Birondo, filed a motion asking for the reconsideration of the order directing the notation of the right of retention of attorney Marcos J. Rotea, on the ground that Simplicio Birondo, father of said minors, was not authorized to enter into any agreement with said attorney regarding the properties of the minors.

After hearing said motion and the opposition thereto, the Court of First Instance of Rizal granted the first by order of May 29, 1936, and set aside the order for notation.

On July 7, 1936, the Court of First Instance of Rizal issued another order again directing the notation of the right of retention of attorney Marcos J. Rotea, but without specifying its value.

The administratrix Francisca Delupio excepted to this order and interposed the present appeal.

The only question submitted for our consideration in the present appeal is whether attorney Marcos J. Rotea is entitled to be compensated for the services rendered by him in favor of Simplicio Birondo's minor daughters in the annulment of the sale made by their grandmother of a parcel of land belonging to them and in having an original certificate of title issued in their names, by virtue of a contract entered into between said attorney and the father of said minors.

It is indisputable that Simplicio Birondo, by the mere fact that he is the father of said minors, has no right to enter into a contract with said attorney binding the properties of his said minor daughters. But even if there had been no such agreement and attorney Marcos J. Rotea, voluntarily taking interest in said minors, had defended their interests against the usurpation of their properties by their grandmother by taking, as he did, the necessary steps leading to that end for their benefit and achieving complete success, he nevertheless has the right, as a negotiorum gestor, to be indemnified for the necessary and useful expenses he had incurred and the damages he had suffered in the discharge of his duties as such gestor, it being immaterial that said minors or their guardian did not ratify his undertaking, in accordance with the provisions of article 1893 of the Civil Code, and to have his lien as attorney noted.

In view of the foregoing considerations, we are of the opinion and so hold that an attorney who, at the request of the father of certain minors who is not the guardian of the latter's properties, undertakes to obtain, as he did obtain, the annulment of the sale of a real property belonging to them fraudulently executed by their grandmother, and who afterwards also causes an original certificate of title covering said property to be issued in the name of said minors, is considered a negotiorum gestor who is entitled to be indemnified for necessary and useful expenses incurred by him and the damages suffered in the discharge of his duties, and to have his right of retention noted.

Wherefore, finding no error in the appealed order, we affirm the same in toto, with costs against the appellant. So ordered.

Avanceña, C. J., Imperial, Diaz, Laurel, Concepcion, and Moran, JJ., concur.

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