

[ G. R. No. L-10082. November 19, 1957 ]

**IN THE MATTER OF THE PETITION FOR THE ANNOTATION OF EIGHT OF WAY ON T. C. T. NO. 22693. SALVADOR ARANETA PETITIONER AND APPELLEE, VS. TOMAS HASHIM, OPPOSITOR AND APPELLANT.**

**D E C I S I O N**

**FELIX, J.:**

Oppositor Tomas Hashim interposed an appeal from an order of the Court of First Instance of Rizal (Quezon City branch) ordering the Register of Deeds of said City to annotate on Transfer Certificate of Title No. 22693 covering Jot No. 285-B, upon payment of the corresponding legal fees, that there is a right of way constituted in favor of lots Nos. 280, 280-D-1, 285, 285-B-1, 28K-B-3, 285-B-4, 291, 292 and 297. The facts of the case are as follows:

On May 18, 1946, Salvador Araneta purchased from the administrator of the Testate Estate of N. T. Hashim lots Nos. 283, 291, 292 and 297 of the Piedad Estate (Exhibit A), which transaction was duly approved by the probate court (Exhibit B). In the deed of sale, Exhibit A, the vendor warranted that "a strip of land has been segregated from lot No. 280 and No. 285, which is twenty (20) meters wide known as lot *No. 280—D—2* (FLS No. 3016-D) and lot No. *Z85-B-2* (FLS No. 3075-D), connecting circumferential road with lot No. 284".

It appears on record that on the same day, the parties also executed a memorandum agreement (Exhibit D), a private document, specifying that lots Nos. 280-D-2 and 285-B-2 were segregated to serve as a road or a right of way for the benefit of lots Nos. 285, 280, 291, 292 and 297, which right was not intended for the benefit of the owners of lot No. 284; that as the owners of lots Nos. 291, 292 and 297 for whom the right of way was constituted can have access to the circumferential road only by passing through lot No. 284, the vendor

agreed to grant to the possessors of the latter lot the use of the “road (lot No. 280-D-2 and No. 285-B-2) if the owners of said lot No. 284 would give to the occupants of lots Nos. 291, 292 and 297 a similar right of way of 20 meters wide. It was further stipulated that if and when the strin of lard would be donated to the Government, the vendee will first be given the option to purchase the same for a nominal consideration (p. 2, Exhibit D).

The record further shows that the vendee, Salvador Araneta, subdivided lot No. 292 into two: Lot No. 292-A was sold to the Isabela Agricultural Corporation and lot No. 292-B to the Colegio de San Jose, and that the road constituting the right of way had been used by the public since July, 1949.

Sometime in March, 1955, the Father Rector of the San Jose Seminary (Colegio de San Jose) received a letter from counsel for the Testate Estate of N. T. Hashim stating that although the strip of land being used by the seminary as road was segregated from the other lots and that the former administrator of the Estate warranted the existence of the same in the deed of sale of certain lots to Mr. Araneta, the latter never offered to obtain such right. It was intimated, however, that the Estate would be willing to sell said lot (No. 285-B-2) for the sum of P12,500 (Exhibit E.)

Being informed of such development, Salvador Araneta filed a petition with the Court of First Instance of Rizal (Quezon City branch), docketed as GLRO Record No. 5975, praying that the Register of Deeds of Quezon City be directed to annotate on Transfer Certificate of Title No. 22693 covering lot No. 285-B-2, that the same was a right of way of 20 meters constituted in favor of lots Nos. 280, 280-D-1, 285, 285-B-1, 285-B-2, 285-B-3, 285-B-4, 291, 292 and 297. This petition was opposed by the new administrator of the Estate of N. T. Hashim alleging, among other things, that the Court, in the exercise of its general jurisdiction, had no authority to entertain the petition which properly falls under its jurisdiction as a land registration court; that lot No. 285—B-2, as part of the Estate of N. T. Hashim was in *custodia legis* and any transaction such as the memorandum agreement mentioned in the petition must be approved by the probate court; that the petition was premature as it was not even alleged that the Register of Deeds had previously refused registration or annotation of the incumbrance sought to be registered and it was also defective because the Register of Deeds had not been notified thereof. It was, therefore, prayed that the petition be dismissed.

After hearing, wherein oppositor failed to appear, the Court issued an order dated August 20, 1955, granting the petition of Salvador Araneta by directing the Register of Deeds of

Quezon City to annotate on T. C. T. No. 22693 that a right of way was constituted on lot No. 285-B-2 covered by said title. The motion for reconsideration of said order filed by the oppositor having been denied, the matter was brought to this Court on appeal alleging that the lower court erred (1) in acquiring jurisdiction over the subject matter of the petition; and (2) in constituting the right of way claimed by petitioner.

In this instance oppositor-appellant, the new administrator of the Estate of N. T. Hashim, maintains the stand that even granting that the memorandum agreement (Exhibit D) entered into between the vendee Salvador Araneta and the former administrator of the Estate is authentic, the vendee should have taken the course outlined by section 52 of Act 496 which reads as follows:

“Sec. 52. No new certificate shall be entered or issued upon any transfer of registered land which does not divest the land in fee simple from the owner or from someone of the registered owners. All interests in registered land less than an estate in fee simple shall be registered by filing with the register of deeds the instrument creating or transferring or claiming such interest and by a brief memorandum thereof made by the register of deeds upon the certificate of title, signed by him. A similar memorandum shall also be made on the owner’s duplicate. The cancellation or extinguishment of such interests shall be registered in the same manner”.

He argues that as Araneta resorted to the courts at once without first availing of this procedure, the Court of First Instance of Rizal (Quezon City branch) acquired no jurisdiction over the subject matter of the petition. It must be noted, however, that Section 52 of the Land Registration Act aforequoted requires the presentation to the Register of Deeds of the instrument creating or transferring the right sought to be annotated. Needless to say in this regard and despite the absence of specification to this effect, that the instrument mentioned in said provision refers to a registerable document and We must not forget that the memorandum agreement (Exhibit D) is only a private one. It is understandable, therefore, that the vendee knowing the futility of filing said memorandum agreement with the Register of Deeds and in view of the different stand of the new administrator of the Estate, sought the court’s intervention in trying to register the right previously allowed him. But we do not have to make a stop at this point. The petition filed with the lower Court revealed that petitioner sought the annotation of the right of way not on the strength of the memorandum

agreement but pursuant to the warranty contained in the deed of sale, as supplemented by said memorandum agreement. There is no controversy that the deed of sale, Exhibit A, was duly approved by the probate court. It could thus be conclusively presumed that the probate court in approving the sale of the properties of the estate was aware of the agreement concluded between the parties and of the warranties and grants appearing in the deed of sale. The petition filed by the vendee actually is an application to the Court to register a right specifically ceded by the vendor in favor of the vendee in the sale duly allowed by the court. Thus, when the oppositor poised the threat to close the road and prevent the use of the easement unless the vendee's successor-in-interest would pay the sum of P12,500 for lot No. 285-B-2, the vendee sought the court's intervention to preserve that right already allowed by the probate court. It may be argued, however, that the vendee could have presented the deed of sale before the Register of Deeds of Quezon City for that purpose, pursuant to section 52 of the Land Registration Act, but We could see that the warranty in Exhibit A, although providing for the segregation of lot No. 285-B-2 and No. 280-D-2 connected with the circumferential road, is not clear as to the purpose for which it was intended and probably that is why it had to be clarified by the memorandum agreement which, We repeat, is only a private document. As the Register of Deeds might not take cognizance of that agreement and might consider the warranty in the deed of sale as vague, human prudence prompted the vendee to take the matter to the court that could properly pass upon the same. We find that under the circumstances, the petition filed with the Court of First Instance of Rizal (Quezon City branch) is proper and that the latter acquired jurisdiction over the same.

Having arrived at this conclusion, there is no need for Us to pass upon the second issue raised by oppositor-appellant it being merely corollary to the first and necessarily falls when the first issue is lost ground.

But We may also ask: is the owner of the servient estate (Estate of N. T. Hashim) not entitled to any compensation or indemnity for the use by the dominant estate of that strip of land? Article 567 of the Spanish Civil Code which was the rule on the matter, reads as follows:

Art. 567. When a tenement, acquired by *purchase, exchange, or partition, is surrounded by other tenements of the vendor, exchanger, or co-owner, the latter shall be obliged to grant a right of way without indemnity*, in the absence of an agreement to the contrary (Practically reproduced in Article 652 of the new Civil

Code).

In view thereof and taking into account the agreement between the parties, the answer is all too obvious.

Wherefore, the order appealed from is hereby affirmed with the clarification that the right of way thus constituted is in favor of lots Nos. 280, 280-D-1, 285, 285-B-1, 285-B-3, 285-B-4, 291, 292 and 297 as described in Exhibit A and in the memorandum agreement Exhibit D. With costs against the oppositor-appellant. It is so ordered.

*Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.*

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