

THE CITY OF MANILA, THE MAYOR OF MANILA, THE CITY ENGINEER OF MANILA, FERNANDO S. VINZONS AND DOMINGA VINZONS-CU, PETITIONERS, VS. JUAN ENTOTE, RESPONDENT.

G.R. No. L-24776. June 28, 1974

Ponente: MUÑOZ PALMA, J.

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MUÑOZ PALMA, J.:

This litigation involves an easement of a right-of-way over Lot 3, Pcs-2672, covered by T.C.T. 45531 of the Register of Deeds of Manila issued in the name of Juan Entote who on February 2, 1961, instituted the present action for Certiorari, Mandamus and Prohibition against the City of Manila, its Mayor and City Engineer, docketed as civil case 46352 of the Court of First Instance of Manila, to compel the City and its officials to release the lot from said easement by virtue of which it was made open to the public in general as an approved private alley. During the pendency of civil case 46352, Fernando Vinzons and his sister Dominga Vinzons-Cu intervened in the proceedings. After trial, the Court of First Instance presided then by Hon. Edilberto Soriano rendered judgment dismissing Juan Entote's complaint. Juan Entote appealed to the Court of Appeals and on August 24, 1964, a decision was rendered by the Fourth Division of said Court[1] which set aside the trial court's decision in the following manner:

"ACCORDINGLY, the judgment a quo is set aside, and we enter another

"(1) declaring the alley under litigation as a private alley, and limiting the use thereof exclusively and only to the owner of the immovable (petitioner), his heirs, assigns and servants, to persons dealing with the owner of the immovable, and to public officers and public employees whose duties have to do with public order, public safety, public health, public morals and the general welfare of society.

"(2) ordering the modification of conditions 6 and 7 contained in the agreement between the City and petitioner so as to read as follows: '6. the use of the alley shall be limited exclusively to the applicant Juan Entote, his heirs, assigns and servants, to persons dealing with him, and to public officers and public employees whose duties have to do with public order, public safety, public health, public morals and the general welfare of society; 7. I will allow the City to lay pipes for sewer and drainage purposes, and I shall not ask for indemnity for the use thereof';

"(3) ordering the nine conditions contained in the agreement between the City and the petitioner, with conditions 6 and 7 modified in accordance with the next preceding paragraph, annotated on the proper certificate of title; and

"(4) ordering the intervenors Fernando S. Vinzons and Dominga Vinzons-Cu to close completely and forever any and all openings and apertures of their houses intended for ingress, egress and regress, abutting on the said private alley. Costs against the intervenors."[2]

The case is now before Us for review on certiorari upon petition filed by the City of Manila, the City Mayor and the City Engineer, Fernando S. Vinzons and Dominga Vinzons-Cu as petitioners with Juan Entote, respondent.

The decision of the appellate court recites the following undisputed facts:[3]

Juan Entote is the registered owner of five (5) lots located in the City of Manila covered by separate certificates of title, to wit: (a) Lot 2 (LRC) Pcs-232, 106.03 sq. m., T.C.T. 46840; (b) Lot 3 Pcs-2672, 202.4 sq. m., T.C.T. 45531; (c) Lot 1 Pcs-2672, 143.11 sq. m., T.C.T. 45547; (d) Lot 12-D Pcs-5804, 142.8 sq. m., T.C.T. 45548, and (e) Lot 2 Pcs-3665, 436.92 sq. m., T.C.T. 45531. All these five lots are contiguous to each other and form one integrated parcel which abuts Padre Herrera Street, a public thoroughfare. When Entote acquired Lot 3 Pcs-2672 which is the lot involved in this litigation and to which We shall refer simply as Lot 3, the same was already subject to an easement of a right-of-way annotated on T.C.T. 45531 which reads as follows:

"Entry No. 2072/T-20550 - - EASEMENT OF A RIGHT OF WAY -- Affecting Lot 3 of plan Pcs-2672 described herein, for ingress, egress and regress in favor of the owners of Lots 1 and 2 of plan Pcs-2672, respectively, their heirs and assigns, their servants and any and all other persons whomsoever, for their respective use, benefits or advantage, with right at all times to pass and repass over said property. (Dec. No. 403, page 36, Book 29 of Not. Pub. of Manila, Nicanor G. Jocson)."

Adjacent to the property of respondent Entote is that of intervenor Fernando Vinzons who is the registered owner of several lots which like those of Juan Entote are adjacent to each other and also constitute one integrated parcel which borders Lorenzo Chacon Street. The house of the other intervenor Dominga Vinzons-Cu is erected on this property of her brother, Fernando Vinzons. One of the lots of intervenor Vinzons is what is now described as Lot 1 of Consolidation Subdivision Plan (LRC) Pcs-232 registered under T.C.T. 46726. This particular lot is a consolidation of Lot 15-A Pcs 12716 which was titled in the name of Fernando Vinzons under T.C.T. 33678, with a 35.87-sq. m. portion of Lot 2 Pcs-2672, the latter having been bought by intervenor Vinzons from Petrona Vera Vda. de Marzan on December 27, 1956. Upon the sale of this 35.87-sq. m. portion of Lot 2 Pcs 2672 and its segregation from the rest of said Lot 2, the vendor Marzan and the vendee Vinzons entered into an agreement whereby:

"The parties agree to waive, quitclaim and renounce their right-of-way easement to the adjoining lot known as Lot 3 of Plan Pcs-2672 and annotated in Transfer Certificate of Title No. 45531 as P/E 1391-93 V-26, there being already an access to Lorenzo Chacon, a public street."

With the consolidation of the 35.87-sq. m. portion of Lot 2 Pcs-2672 with Lot 15-A Pcs 12716, a new certificate of title No. 46726 was issued for the consolidated parcel now described as Lot 1 Pcs-232. The remaining portion of Lot 2 Pcs 2672 with an area of 106.03 sq. m. became Lot 2 of the consolidation subdivision plan 232 and was subsequently sold by the owner Marzan to respondent Entote to whom was issued T.C.T. 46840, and is one of the contiguous lots owned by Entote which We mentioned earlier.

On March 12, 1957, respondent Entote applied to the City Engineer of Manila for a permit to construct a two-storey building on his aforementioned property. The City Engineer, however, required as a condition to the issuance of said permit that Lot 3 be converted into an approved private alley subject to nine (9) conditions as follows:

- "1. The private alley shall be at least three (3) meters in width;
- "2. The alley shall not be closed so long as a building exists thereon;
- "3. The alley shall be opened to the sky;
- "4. I shall construct the alley and provide the same with concrete canals as per specifications of the City Engineer;
- "5. The maintenance and upkeep of the alley shall be at my expense;

"6. The alley shall remain open at all times, and no obstruction whatsoever shall be placed thereon;

"7. I will allow the public to use the same, and allow the City to lay pipes for sewer and drainage purposes, and I shall not ask for any indemnity for the use thereof;

"8. I shall impose upon the vendor or new owner of the property the conditions above-mentioned;

"9. I shall register at my expense in the Register of Deeds of Manila, the nine (9) conditions set forth for the opening of this alley as encumbrance in the corresponding Certificate of Title covering my property."
(underline Ours)

Believing that he had no other recourse but to accede to the conditions imposed by the City Engineer, respondent accepted the same, and the nine conditions were duly annotated on the certificate of title of Lot 3.

Sometime in 1959, respondent Entote wanted to construct an adobe stone fence and a guardhouse at the dead end portion of Lot 3 because of thefts committed inside his property, and he applied for a building permit but his application was denied on the ground that Lot 3 was an approved private alley which was to remain accessible not only to the adjacent lot-owners but to the public in general. On September 17, 1959, Entote sent a letter to the City Mayor and the City Engineer stating that he was withdrawing Lot 3 as an approved private alley, but this was opposed and denied by the City. Entote was thus compelled to go to court for relief through the present action.

The Court of Appeals found merit in respondent Entote's complaint, and We fully concur with the judgment under the following considerations.

- As regards the opposition of petitioners Fernando Vinzons and Dominga Vinzons-Cu to whom We shall refer simply as intervenors -

An easement as defined in Art. 613 of the Civil Code is an encumbrance imposed upon an immovable for the benefit of another immovable belonging to a different owner. It is established either by law, in which case it is called legal, or by the will of the parties, in which event it is a voluntary easement.[4] A voluntary easement is extinguished upon its renunciation by the owner of the dominant estate.[5]

We have before Us an easement of right-of-way voluntarily constituted over Lot 3 Pcs-2672 by its original owner, Petrona Vera Vda. de Marzan, in favor of Lots 1 and 2 also of Pcs 2672 likewise owned by her. When owner Marzan sold a small portion of 35.87 square meters of Lot 2 to intervenor Fernando Vinzons, the vendor and vendee agreed in writing that the parties "waive, quitclaim and renounce their right-of-way easement to the adjoining lot known as Lot 3 of Plan Pcs-2672" for the reason that the sold portion was to be consolidated with another lot of the vendee which gave it an outlet to Lorenzo Chacon Street. By this written agreement the vendee, Fernando Vinzons, expressly and formally renounced and lost accordingly whatever rights he had to the easement of right-of-way over Lot 3; his renunciation being perfectly valid under the law[6] the same is binding upon him and upon all those whose interests are derived from him, the other intervenor Dominga Vinzons-Cu included.

Intervenors assert, however, that the Appellate Court erred in denying them the enjoyment of the easement, the waiver executed by Fernando Vinzons notwithstanding, for the simple reason that the herein intervenors are embraced within the phrase: "any and all other-persons whomsoever, for their respective use.." found in the entry of the easement and that said phrase is "clear enough indication of the intent to distinguish between, on the one hand, the 'owners of Lots 1 and 2 . . . their heirs and assigns, their servants', and on the other, all other persons of the general public." In other words, according to intervenors the easement was intended not only for the benefit of the immovable Lot 2 and its owners, but of the community and the public at large.[7]

The foregoing argument of intervenors cannot be sustained. For ready reference We are quoting once more the

entry on the easement which reads:

"Entry 2072/T-20550 -- EASEMENT OF A RIGHT OF WAY -- Affecting Lot 3 of plan Pcs-2672 described herein, for ingress, egress and regress in favor of the owners of Lots 1 and 2 of plan Pcs-2672, respectively, their heirs and assigns, their servants and any and all other persons whomsoever, for their respective use, benefits or advantage, with right at all times to pass and repass over said property. (Dec. No. 403, page 36, Book 29 of Not. Pub. of Manila, Nicanor G. Jocson)." (underline Ours)

As correctly stated in the decision under review:

"x x x A reading of the annotation on the certificate of title 45531 will show that the right of way was constituted in favor of the owners of Lots 1 and 2 of plan Pcs-2672, their heirs and assigns, their servants and all other persons whomsoever, for their respective use. Here the easement enumerates particular or specific persons who are entitled to the easement and followed by general terms.

"It is a rule of legal hermeneutics that where general words follow an enumeration of persons or things, by words of a particular or specific meaning, such general words are not to be construed in their widest extent, but are to be held as applying only to persons or things of the same general class as those specifically mentioned.

'Under the rule of construction known as 'ejusdem generis', where general words follow the enumeration of particular classes of persons or things, the general words will be construed as applicable only to persons or things of the same general nature or class as those enumerated. The rule is based on the obvious reason that if the legislature had intended the general words to be used in their unrestricted sense they would have made no mention of the particular classes.' (82 CJS 658-660.)

'General words, which standing alone might have a wide and comprehensive meaning, when joined with an enumeration of articles, things, and entities will be interpreted in their narrower sense and understood to refer only to articles, things and entities fairly similar in kind, class and nature to those set forth in the associated list of enumeration.' (Sandack v. Tamme, C.A. N.M., 182 F. 2d. 759.)

"In the case at bar general words follow an enumeration of particular classes of persons which are analogous in the sense that they have one common denominator - privity with the owners of lots 1 and 2 plan Pcs-2672. Hence, the generic terms used in the easement should be construed in a limited sense as to exclude the indiscriminate public from the enjoyment of the right of way easement constituted on the alley and limit the same to those who are privy to the owners of the dominant estates, lots 1 and 2 plan Pcs -2672." (pp. 18-20, rollo)

Intervenors assail the application of the "ejusdem generis" rule which gives the "easement a restricted and restrictive construction" and claim that under the "primordial rule of construction that where the terms of an instrument are clear, there is no room or occasion for interpretation either to enlarge or restrict their plain meaning." [8] The flaw of the argument lies in the fact that it ignores the phraseology of the easement which made use first, of terms referring to specific class of persons, viz: "the owners of Lots 1 and 2 of plan Pcs-2672, respectively, their heirs and assigns, their servants", and then, after such an enumeration, subjoins a term of extensive and general signification, i.e., "and any and all other persons whomsoever." It is this kind of phraseology in a statute or any written document which precisely calls for the application of the doctrine of "ejusdem generis" in construing the import of the general phrase used. For under the maxim of "ejusdem generis" which means "of the same kind, class or nature", when general words follow an enumeration of particular cases, such words apply only to cases of the same kind as those expressly mentioned. [9] Thus, when broad expressions are used; such as, "and all others, or "any others" these are usually to be restricted to persons or things of the same kind or class with those specifically named in the preceding words. [9a] In our jurisdiction, this Court in *Ollada vs. Court of Tax Appeals, et al.* [10] applied the rule of "ejusdem generis" to construe the purview of a general phrase "other matters" appearing after an enumeration of specific cases decided by the Collector of Internal Revenue and appealable to the Court of Tax Appeals found in section 7, paragraph 1, of Republic Act No.

1125, and it held that in order that a matter may come under said general clause, it is necessary that it belongs to the same kind or class of cases therein specifically enumerated. In *Mutuc vs. Commission on Elections*,^[11] the rule of "ejusdem generis" was once more applied to construe a provision of the Constitutional Convention Act of 1970 (R.A. 6132) which made it unlawful for candidates "to purchase, produce, request or distribute sample ballots, or electoral propaganda gadgets such as pens, lighters, fans (of whatever nature), flashlights, athletic goods or materials, wallets, bandanas, shirts, hats, matches, cigarettes, and the like, whether of domestic or foreign origin,"^[12] and the Court held that under the doctrine of "ejusdem generis" the phrase "and the like" applies to things or gadgets of the kind specifically enumerated, and that consequently the use of a taped jingle for campaign purposes is not within the general clause. All the above simply shows that contrary to the assertions of the intervenors, in the case now before Us, the Appellate Court correctly applied the rule of "ejusdem generis" in construing the easement in question thereby holding that the clause "any and all other persons whomsoever" embraces only "those who are privy to the owners of the dominant, estate, lots 1 and 2 Plan Pcs-2672" and excludes "the indiscriminate public from the enjoyment of the right-of-way easement."^[13]

Intervenors-petitioners argue however that the right of the public to use Lot 3 is a settled matter decided in their favor and adversely against respondent Entote in civil case 33076 of the Court of First Instance of Manila, and that the Court of Appeals erred in holding the contrary.^[14] Intervenors refer to a complaint filed on July 10, 1957, with the Court of First Instance of Manila by respondent Entote against intervenor Fernando Vinzons and the latter's tenant Cu Kim Ching to compel them to remove a steel matting fence which was built across Lot 3 on the side bordering the Vinzon's property. In said case, Fernando Vinzons interposed a counterclaim alleging that he had in his favor an easement over Lot 3. The trial court rendered judgment the dispositive part of which reads:

"WHEREFORE, judgment is hereby rendered ordering the defendants forthwith to remove the adobe stone and steel matting fence erected on the private alley in question (being lot 3, Pcs-2672) of which plaintiff is the exclusive owner; sentencing defendants to pay, jointly and severally, to plaintiff the sum of P3.00 per sq. m. per month for the use and occupation of the 14.4481 sq. m. of the said alley, cut by the aforementioned fence, from April, 1957 until the fence referred to is actually removed, and the costs; and dismissing defendants' counterclaim for lack of merit. (underscoring ours)"

In a portion of the body of the decision of the trial court, it says -

"As to the second proposition or issue raised by defendant, that 'he has a right of easement to use or pass along the alley in question', it is needless to say that as soon as the fence is removed, defendant, in common with others, may use or pass along the alley which is intended for the public (See Exhs. 25, 25a, 25b and 25c)." (pp. 22-23, rollo, underline Ours)

It is claimed by intervenors that the above pronouncement in civil case 33076 from which no appeal was taken by respondent Entote, is now the law of the case "between the parties".

We disagree. The Appellate Court rightly held that the quoted portion of the trial court's opinion in civil case 33076 was but an obiter dictum because the right of the public to the use of the private alley, Lot 3, was never an issue in said case.^[15] What was put forth by intervenor Vinzons as his defense and counterclaim in the case was his alleged right to an easement of right-of-way over Lot 3; he did not invoke either in his defenses or counterclaim the right of the public in general to use said alley. Considering therefore that what was set up by intervenor Fernando Vinzons as his counterclaim was his right-of-way easement over Lot 3, which however was expressly and categorically dismissed in the dispositive part of the decision, the Court of Appeals properly held that said decision in civil case 33076 was *res judicata* in favor of now respondent Entote as against intervenors herein insofar as the easement over Lot 3 was concerned. It is a settled doctrine that the judgment of a case is what is contained in the dispositive portion; statements made in the opinion are "informal expressions of the view

of the court and cannot prevail against its final order or decision." [16] A remark made, or opinion expressed, by a judge, in his decision upon a cause, incidentally or collaterally, and not directly upon the question before him, or upon a point not necessarily involved in the determination of the cause, is an obiter dictum and as such it lacks the force of an adjudication and is not to be regarded as such. [17] In the aforementioned civil case 33076 the alleged right of the public to use Lot 3 as an approved private alley was not in issue and consequently the statement of the trial court on that point was a mere expression of an opinion, an obiter dictum with no binding force for purposes of res judicata.

The next argument of intervenors is that the maintenance of Lot 3 as a private alley open to public use is in consonance with section 103 of the Revised Ordinances of the City of Manila which provides:

"When the applications, plans, and specifications conform to the requirements of this title and of title thirteen hereof, the city engineer shall issue a permit for the erection of the building and shall approve in writing such plans and specifications, one copy of which shall be returned to the owner or his agent and one copy shall be retained by the city engineer; Provided, That the building shall abut or face upon a public street or alley or on a private street or alley which has been officially approved; And provided, further, That any private street or alley opened in an interior lot for the purposes of this section, once officially approved, shall be open to the general public, and with its approved width preserved, shall be maintained and kept in good repair by the grantee of the permit, his heirs, executors and assigns, and shall never be closed by any person so long as there is a building or other structure abutting or facing upon such private street or alley. (Emphasis ours.)" (See p. 13, petitioners city officials' brief) [18]

Intervenors assert, and on this point the other petitioners, i.e., the City of Manila and its Mayor and City Engineer, join them, that the above-quoted provision is designed to protect the health, sanitation, and the safety of the public and that this Court upheld its enforcement in the case of Aragon et al. vs. City Engineer Aquino, GRL-48451, October 30, 1942.

We do not doubt the wisdom of, much less the necessity for, an ordinance such as section 103 quoted above; however, We believe that it cannot be used to justify the retention of Lot 3 of respondent Entote as private alley open to the general public.

It is important to note that the City Engineer required the opening of Lot 3 as a private alley in connection with the issuance of a permit to construct a building of respondent Entote on one of his lots because the building to be constructed did not abut a public street and the occupants thereof would have no exit. To provide that exit to a public street, Lot 3 had to be converted into a private alley, and this was primarily for the benefit of the building to be constructed on the interior lot of respondent Entote. That being the case, We do not see how the Appellate Court could have erred, as contended by intervenors, when it held that an alley opened and maintained as a condition for the authority to construct a building is intended only for its benefit and not for the general public, following, as it did, the decision of this Court in Li Yao vs. de Leon, et al. L-14324, April 12, 1961, 1 SCRA 966, 972. [19]

In the Li Yao case the facts were: Mariano Cu Unjieng and Sons owned several lots in the City of Manila among which were known as Lots 3, 4-B, and 6-B. Lot 3 was leased by Cu Unjieng to Smith Bell & Co. and the latter desiring to construct a building at the inner portion of Lot 3 applied for a building permit. Because the building did not abut a public street, more particularly Raon street, the City Engineer of Manila required as a condition to the issuance of a permit that a private alley, two meters in width, be opened on the eastern part of Lot 3 to connect said construction with Raon street pursuant to section 103 of the Revised City Ordinances. Cu Unjieng as owner of the lot executed a public instrument undertaking to open and maintain said private alley, and this was duly annotated on the corresponding certificate of title of Lot 3 as well as the titles of Lots 4-B and 6-B. Subsequently,

William Li Yao became the owner of Lot 3 and in July of 1957 he filed a petition in Court for the cancellation of the aforesaid encumbrance stating that the building to which the encumbrance referred no longer existed and the legal necessity for the private alley had terminated. The petition was opposed by the new owners of Lots 4-B and 6-B surnamed de Leon on the ground that they had buildings on these lots which would have no more access, to Raon street if the alley were closed. The City Engineer of Manila did not oppose the petition. The trial court granted the petition of Li Yao after it found that Lots 4-B and 6-B are contiguous to other lots of the oppositors which border along Rizal Ave. street. On appeal, this Court affirmed the Order of the court a quo and held inter alia the following:

"Having been made as a condition precedent for the construction of a building in the interior of Lot No. 3, said demand was evidently made for the benefit of the occupants of said building, not those of Lots 4-B or 6-B, now belonging to appellants. Whatever benefits the latter may have derived from the private alley in question was purely incidental to those established in the interest of the occupants of Lot No. 3. x x x The alley in question was opened and maintained in compliance with the provisions of section 103 of the Revised City Ordinances, which deals with the issuance of building construction permits by the City Engineer. Pursuant thereto, no such permit shall be granted unless the building concerned abuts or faces 'upon a public street or alley or on a private street or alley which has been officially approved.' Consequently, such private street or alley as may have been opened and maintained as a condition for the authority to construct said building is intended only for its benefit." (pp. 972-974, 1 SCRA; underline Ours)

The intervenors however cite the case of *Aragon vs. City Engineer Aquino*, supra, to justify the retention of the encumbrance over Lot 3; but that case is not in point as correctly argued by respondent Entote in his brief.[20] In the *Aquino* case there was a justifiable reason to deny the closure of the private alley in question as it would deprive the "accessorias" constructed along the alley an exit to a public street and the persons occupying said "accessorias" would thereby be prejudiced. In the case now before Us, however, the herein intervenors have their own exit to Lorenzo Chacon street as their property abuts the latter, and the closure of Lot 3 would not damage them at all. Intervenors have really no use for said alley because as found by the Appellate Court they even constructed a steel matting fence across a portion of Lot 3 which was the one ordered removed by the Court of First Instance of Manila in civil case 33076 mentioned earlier.

To compel respondent Entote to open and maintain Lot 3 for the benefit of the herein intervenors as well as for the general public is to countenance a most inequitable situation because: (1) without paying compensation for such use, intervenors are given an exit to Padre Herrera street, the next street parallel to Lorenzo Chacon street, thereby gaining access to two public thoroughfares, a privilege or an advantage denied to respondent Entote who has no access to Lorenzo Chacon street through the Vinzons' property; (2) as regards the general public, the latter is given the right to encroach on the privacy of a property owner even without valid cause. Actually there is no benefit to be gained by the indiscriminate public with the use of said alley as the latter traverses only through the property of respondent Entote and ends there; the public cannot make use of the alley to effect a "shortcut" from Padre Herrera to Lorenzo Chacon Streets because the Vinzons' property stands on the way.

Hence, We agree with the Appellate Court when it ruled that the phrase contained in section 103 of the Revised City Ordinances, to wit: "shall be opened to the general public" is to be construed or interpreted to mean "only those persons dealing with the owner of the immovable, the residents of the buildings for which the alley was opened in the first place, and officials and employees of the city as well as the national government having to do with the safety, health, public order, morals and the general welfare of society" and that "the indiscriminate public" is excluded therefrom.[21]

In fact, the word "alley" when not qualified by the term "private" is conventionally understood in its relation to towns or cities to mean a narrow street in common use (*White vs. Meadow Park Land Co.*, 213 S.W. 2d 123, 125,

240 Mo. App. 683), but when the word "private" is prefixed to the word "alley" it acquires a different meaning, that is, a "private alley" is an alley which is not dedicated to the public use and to which the general public is denied access or which is set apart for some particular purpose. (Talbert vs. Mason, 113 vs. W. 918, 921, 136 Iowa 373, 14 L.R.A., 818, 125 Am. St. Rep. 259)

One last argument advanced by intervenors is that the decision under review permits respondent Entote to "disown and renege upon a formal undertaking he had voluntarily assumed." [22]

We can summarily dismiss this argument of intervenors by referring to the case of Li Yao, supra, where there was a similar undertaking made by the property owner to maintain the private alley open to the public but which did not stand on the way of the Court when it allowed the property owner to cancel said undertaking. However, a stronger reason why intervenors' contention cannot be sustained is given by the Appellate Court when it said:

"x x x Entote entered into the said agreement in the belief that the interpretation given to section 103 of the Revised City Ordinances by the city officials is correct. He was under the mistaken impression that the city could validly impose the nine conditions.

"Mistake vitiates consent (See art. 1330, new Civil Code.) This is especially true where mistake is made upon conditions which have moved the parties to enter into the agreement. (See art. 1331, supra.) Therefore, it is obvious that where mistake invalidates consent, the agreement is not binding. In this case, the consent of Entote was vitiated by mistake in believing that the City could validly impose the conditions. Hence, said agreement is not binding.

"The argument that Entote could have had the assistance of counsel, and that considering his intelligence he could not have committed the mistake, is neither here nor there. Entote sincerely believed that the respondents could legally impose the condition that the alley must always be open to the public. He committed a mistake in good faith. Hence, he is entitled to relief from the adverse effects of his mistake. x x x" (pp. 34-35, rollo)

On the basis of all that We have stated above, We find that the Appellate Court did not commit any error when it ordered the intervenors herein "to close completely and forever any and all openings and appertures of their houses intended for ingress, egress and regress" abutting on the alley in question, [23] the latter being a necessary consequence of the finding that intervenors have no right to any easement of right-of-way over Lot 3. The claim of intervenors that Dominga Vinzons-Cu would undergo considerable expense if required to tear down her existing wall, demolish and remodel her house is of no moment considering that she built with the knowledge that her brother had waived and renounced his easement over Lot 3; if she was not told of that fact, then it is her co-intervenor, Fernando Vinzons, who is to blame.

2. With respect to the opposition of petitioners, the City of Manila, the City Mayor and City Engineer -

The above-named petitioners center their opposition to the petition of respondent Entote on section 103 of the Revised Ordinances of the City of Manila. [24] This point has been amply discussed in this Opinion, [25] and what has been stated is sufficient to dispose of the lone argument of the City. We add, however, that just as the City of Manila in the case of Li Yao, supra, found no justifiable reason to oppose the petition of William Li Yao to cancel from the latter's certificate of title the undertaking to keep his Lot 3 open to the public, so also in the case of the herein respondent Entote, the City should find no valid reason to oppose the cancellation of the encumbrance which requires respondent's Lot 3 to be accessible to the public in general, the situation in the two cases being strikingly similar.

PREMISES CONSIDERED, We DENY this Petition for Review and AFFIRM the decision of the Court of Appeals with costs against intervenors-petitioners.

SO ORDERED.

Makalintal, C.J., Teehankee, Makasiar, and Esguerra, JJ., concur.
Castro, J., did not take part.

[1] Composed of: Justices Fred Ruiz Castro, ponente, now Justice of this Court, Francisco Capistrano and Julio Villamor, CA-G.R. No. 31094-R

[2] pp. 39-41, rollo

[3] pp. 6-13, *ibid*

[4] Art. 619, Civil Code; Legal easements are covered by Chapter 2, Title VII, Book II, *ibid*; voluntary easements, by Chapter 3, *ibid*

[5] Art. 631, (5), *ibid*

[6] See Francisco Paez vs. Jobson, et al. - 54 Phil. 239, 243

[7] Third assignment of error, intervenors-petitioners brief, pp. 29-31

[8] pp. 30-31, intervenors' brief

[9] Chicago Union Traction Co. vs. City of Chicago, 65 N.E. 451, 59 L.R.A. 631; Morgan vs. State, ex rel. Dist. Atty., 44 So. 2d 45, 208 Miss. 185

[9a] City of Lexington vs. Edgerton, 159 S.W. 2d 1015, 289 Ky. 815, cited in Words & Phrases, Vol. 14, Permanent Ed., p. 209

[10] 99 Phil. 604, 610

[11] L-32717, November 26, 1970, 36 SCRA 228, 232

[12] underline Ours

[13] p. 20, rollo

[14] Fourth assignment of error, p. 35, intervenors' brief

[15] p. 24, rollo

[16] Dayrit vs. Court of Appeals, et al., L-29388, December 28, 1970, 36 SCRA 548, 559. For exceptions to this rule, however, see Filipino Legion Corp. vs. Court of Appeals, Lentija, et al. L-22364; Lentija, et al. vs. Filipino Legion Corp., L-28330, April 30, 1974.

[17] Morales vs. Paredes, 55 Phil., p. 565

[18] This argument is covered by the first, second, and fifth assignment of errors in intervenors' brief, pp. 15, 20, and 37

[19] see p. 28, rollo

[20] see pp. 9-14, respondent's brief

[21] pp. 33-34, rollo

[22] Seventh assignment of error, p. 47, intervenors' brief

[23] Sixth assignment of error, p. 40, brief

[24] see pp. 9-22, Petitioners-City Officials' brief

[25] pp. 11-15 of this Decision

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