

RONNIEVIC C. LAGNADA, ALLAN F. CRISOSTOMO, BERNIE F. CRISOSTOMO, JASON LAGNADA, DIONESIO RODES AND CEFERINO DEMETRIO, PLAINTIFFS-APPELLEES, VS. THE CHURCH OF JESUS CHRIST OF LAT...

Ponente: INTING, J.

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INTING, J.:

Before Us is an Appeal[1] filed by The Church of Latter Day Saints (Church) assailing the Judgment[2] of Branch 2, Regional Trial Court (RTC), Butuan City, ordering the easement of right of way on a portion of the property of the Church in favor of the appellees, the dispositive portion of the decision states:

WHEREFORE, in light of the foregoing, the court hereby renders judgment in favor of the plaintiffs and against defendants. Accordingly, this case is to be resolved in the following manner:

a.)

The parties are ordered to meet up once more and settle the aspect of just compensation;

b.)

For this purpose, the parties are given a period of 90 days from receipt of this judgment within which to arrive at a settlement/conclusion and to furnish the court a copy of their final agreement in writing;

c.)

The court would only call for the opening of the 3 meter wide portion of defendants property and the demolition of the concrete fence built thereat after it is fully satisfied that the agreed amount/s of just compensation including damages is/are determined and paid to the defendants.

SO ORDERED.

The facts of the case are undisputed.[3]

The Church purchased a parcel of land facing Montilla Boulevard sometime in 1977 from Judge Willhelmo Fortun and Salvador Fortun. It constructed its church and its perimeter fence made of cyclone wire on the property.

Sometime in March 2004, Ronnie Lagnada (Ronnie) entered an agreement with Loreto G. Chiu for a 2-meter wide road right of way. On the same month, Ronnie, through his counsel, sent a letter to the Church offering to buy a portion of the property, 3 meters wide beginning from the northwestern portion of the property up to Montilla Boulevard. Ronnie alleged that Judge Fortun reserved an area of the property for ingress and egress. The Church declined the offer and pointed out that there is no such agreement or provision on the deeds of conveyance between the Church and Judge Fortun.

Ronnie together with the other people, including the other appellees, then sought the assistance of the Barangay Captain to mediate and/or persuade the Church to sell a portion of its property to be used as ingress and egress, it being the shortest and most convenient route to Montilla Boulevard. The Church still rejected the offer and added that construction of improvements on the back portion of the Church property was ongoing.

Consequently, an action for Compulsory Easement of Right of Way was instituted against the Church.

During the pendency of the case before the trial court, the RTC appointed and directed Atty. Miguel B. Zulieta Jr. to conduct an ocular inspection on the area.[4] The pertinent portions of the Report[5] on the ocular inspection reads:

After we were through seeing the periphery of the church, we then proceeded to look the back portion of the church, the area where the households of the plaintiffs were located and allegedly locked up because of the total enclosure of the church premises. As there was no other outlet already, we exited from the church premises out to Montilla Boulevard using the only gate of the church and then from there we entered a certain street (Sesame?) and as we reached at a basketball court we entered inside using a narrow pedestrian passageway in going to the households of the plaintiffs. Upon our arrival, we then proceeded to the back portion of the concrete fence of the church. We inquired as to who are the residents of those houses and we found out the indeed they are the plaintiffs. This time we were still with the respective counsels of the plaintiffs and defendants. Our observation was that the households of the plaintiffs were indeed inconvenienced by the concrete fencing of the church premises when calibrated in the light of directly and easily accessing the national highway, which in this case is Montilla Boulevard. But the entire households of the plaintiffs were not totally locked up as there was a narrow pedestrian passageway which could be used as the only means in entering and going out to Montilla Boulevard via Sesame Street of Barangay Golden Ribbon of this city.

The RTC ruled against the Church, arguing that: (1) plaintiffs successfully established that they are entitled to an easement of right of way; and (2) there is a need to establish a right of way for the safety and welfare of all residents in the area. Aggrieved, the Church filed the instant appeal and raised the following errors:

I.

THE LOWER COURT ERRED IN GRANTING AN EASEMENT OF RIGHT OF WAY ON THE GROUND THAT THE LEGAL REQUISITES FOR EASEMENT ARE NOT PRESENT:

(A)

THE RIGHT OF WAY CLAIMED IS NOT A POINT LEAST PREJUDICIAL TO THE DEFENDANT-APPELLANT;

(B)

THERE IS AN EXISTING PATHWAY AND TWO POTENTIAL POINTS OF INGRESS AND EGRESS OF SHORTER DISTANCE TO AND FROM THE NEAREST PUBLIC HIGHWAY;

(C)

THERE ARE TWO OTHER SHORTER ROUTES FROM AND TO THE PLAINTIFFS-APPELLEES' PROPERTY THAT CONNECT TO TWO PUBLIC ROADS, OTHER THAN THE ONE PRAYED FOR IN THE COMPLAINT.

II.

THE LOWER COURT ERRED IN NOT FINDING THAT THE PLAINTIFFS-APPELLEES ARE BARRED BY LACHES.

Our Ruling

The appeal is meritorious.

The Civil Code provides:

Art. 649. The owner, or any person who by virtue of a real right may cultivate or use any immovable, which is surrounded by other immovables pertaining to other persons and without adequate outlet to a public highway, is entitled to demand a right of way through the neighboring estates, after payment of the proper indemnity.

Should this easement be established in such a manner that its use may be continuous for all the needs of the dominant estate, establishing a permanent passage, the indemnity shall consist of the value of the land occupied and the amount of the damage caused to the servient estate.

In case the right of way is limited to the necessary passage for the cultivation of the estate surrounded by others and for the gathering of its crops through the servient estate without a permanent way, the indemnity shall consist in the payment of the damage caused by such encumbrance.

This easement is not compulsory if the isolation of the immovable is due to the proprietor's own acts.

Art. 650. The easement of right of way shall be established at the point least prejudicial to the servient estate, and, insofar as consistent with this rule, where the distance from the dominant estate to a public highway may be the shortest.

Art. 651. The width of the easement of right of way shall be that which is sufficient for the needs of the dominant estate, and may accordingly be changed from time to time.

"To be entitled to a compulsory easement of right of way, the preconditions provided under Arts. 649 and 650 of the Civil Code must be established. These are: (1) that the dominant estate is surrounded by other immovables and has no adequate outlet to a public highway; (2) that proper indemnity has been paid; (3) that the isolation was not due to acts of the proprietor of the dominant estate; (4) that the right of way claimed is at a point least prejudicial to the servient estate and, in so far as consistent with this rule, where the distance from the dominant estate to a public highway may be the shortest. The burden of proving the existence of these prerequisites lies on the owner of the dominant estate.[6]"

In the instant case, it is clear that there are alternative routes leading to Montilla highway: (1) per ocular inspection, there is a narrow passage way leading to Sesame Street which then leads to Montilla Boulevard[7]; (2) per testimonies of witnesses of the plaintiffs-appellees, Limen and Rodes, there is an alternative route through San Vicente Road and the Barangay Road leading to Montilla Boulevard[8]; and (3) per testimony of plaintiff-appellee Lagnada, there is a 2-meter passageway adjacent to the subject 3-meter compulsory right of way[9].

However, these alternative routes, according to plaintiff-appellees, are[10]: (1) muddy and circuitous; (2) flood prone and difficult to access Montilla Boulevard; (3) in times of emergencies, it is difficult to access Montilla Boulevard; (4) the 2-meter wide right of way is not sufficient to have a standard road; (5) they do not provide the safest and adequate outlet to Montilla Boulevard; and (6) the alternative routes are secondary roads, far, very circuitous and not established.

Yet, apart from the testimonies of the plaintiffs-appellees, there is no proof that: (1) the area is flood prone; (2) there was an emergency situation that experienced difficulty in accessing these routes; and (3) these routes are not safe. "It is incumbent upon the party claiming affirmative relief from the court to convincingly prove its claim. Bare allegations, unsubstantiated by evidence are not equivalent to proof under our Rules. In short, mere allegations are not evidence.[11]"

It appears then that these alternative routes are just inconvenient for the plaintiffs-appellees. Inconvenience has never been enough to impose an easement of right of way to another person's property. "To be sure, the true standard for the grant of the legal right is adequacy. Hence, when there is already an existing adequate outlet from the dominant estate to a public highway, as in this case, even when the said outlet, for one reason or another, be inconvenient, the need to open up another servitude is entirely unjustified.[12]"

The Supreme Court held:

Thus, in *Cristobal v. CA*, the Court disallowed the easement prayed for because an outlet already exists which is a path walk located at the left side of petitioners' property and which is connected to a private road about five hundred (500) meters long. The private road, in turn, leads to Ma. Elena Street, which is about 2.5 meters wide, and finally, to Visayas Avenue.

Also in *Floro v. Llenado*, we refused to impose a right of way over petitioner's property although private respondent's alternative route was admittedly inconvenient because he had to traverse several ricelands and rice paddies belonging to different persons, not to mention that said passage is impassable during the rainy season.

And in *Ramos v. Gatchalian Realty, Inc.*, this Court refused to grant the easement prayed for even if petitioner had to pass through lots belonging to other owners, as temporary ingress and egress, which lots were grassy, cogonal, and greatly inconvenient due to flood and mud because such grant would run counter to the prevailing jurisprudence that mere convenience for the dominant estate does not suffice to serve as basis for the easement.

Clearly, since plaintiffs-appellees are not entirely locked out considering the presence of three alternative routes leading to Montilla Boulevard, in addition to their failure to prove the inadequacy of these alternative routes, the compulsory easement of right of way must fail.

Anent the allegation of laches, suffice it to say that the situation sought to be avoided by the principle of laches does not apply in the instant case. Hence it cannot be invoked against plaintiffs-appellees. Laches is not just "concerned with mere lapse of time; the fact of delay, standing alone, being insufficient to constitute laches.[13]" "It is a rule of equity and applied not to penalize neglect or sleeping on one's rights, but rather to avoid recognizing a right when to do so would result in a clearly unfair situation.[14]"

WHEREFORE, the instant appeal is GRANTED. The Decision of the Regional Trial Court is SET ASIDE.

SO ORDERED.

Camello, (Chairperson), and Perez, JJ., concur.

[1] Rollo, pp. 49-74

[2] Rollo, pp. 86-100

[3] Rollo, pp. 58-60 (as alleged in the Appellant's Brief and not disputed by appellees, p. 107)

[4] Rollo, p. 91

[5] Records, pp. 237-239

[6] *Cristobal et al. v. Court of Appeals et al.*, G.R. No. 125339, June 22, 1998

[7] Rollo, pp. 84-85

[8] TSN, October 19, 2004, pp. 14-17 (Limen) and p. 21 (Rodes)

[9] TSN, July 29, 2008, p. 12

[10] TSN, October 19, 2004, pp. 6 and 14; July 29, 2008, pp. 6-7; Rollo, pp. 108 and 126

[11] Manaloto et al. v. Veloso III, G.R. No. 171365, October 6, 2010

[12] Dichoso et al. v. Marcos, G.R. 180282, April 11, 2011

[13] Insurance of the Phil. Islands Corp. v. Spouses Gregorio, G.R. No. 174104, February 14, 2011

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