

**FE P. VELASCO, REPRESENTED BY ALFREDO GONZALES,
PETITIONER, VS. HON. VICENTE N. CUSI, JR. AND THE CITY OF
DAVAO, RESPONDENTS.**

G.R. No. L-33507. July 20, 1981

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

Petitioner filed in the Court of First Instance of Davao an action against Davao City to quiet title to her lot known as Lot 77-B-2, a portion of which she claims to having been occupied illegally as part of Bolton Street, Davao City. On a motion to dismiss filed by the defendant, on the ground that the complaint states no cause of action, the Court, presided over by respondent Judge Hon. Vicente Cusi Jr., dismissed the case. Hence, this petition for certiorari seeking a review of the Order of dismissal dated July 11, 1970 (Annex D to the Petition).[1]

The dismissal being on the ground that the complaint does not state a cause of action, the allegations of the complaint have to be closely examined, as the court a quo did in its Order aforecited, which quoted the material allegations of the complaint as follows:

"The action is to quiet title and damages, But the complaint does not allege any cloud or doubt on the title, Transfer Certificate of Title No. T-7000 of the Register of Deeds of the City of Davao, of the plaintiff to Lot No. 77-B-2, subdivision plan Psd-22295. According to the complaint, '...when plaintiff bought the said lot 77-B-2 from the original owner in 1956, the Bolton Street was already existing; that without ascertaining the monuments along Bolton Street, she had her house constructed on her said lot and built fence along said Bolton Street which she believed to be the boundary between her lot and said street and in line with other fences already existing when she bought said lot; 6. That plaintiff has just discovered, after a relocation of the monuments of her lot, Lot No. 77-B-2, that the Bolton Street of the defendant has encroached at least TWENTY-FIVE (25) SQUARE METERS with dimension of 2.5 meters by 10 meters, making her actual occupation of her lot 10 meters by 47.5 meters, as indicated in the plan Annex "A" hereon enclosed thereon by red pencil lines; 7. That plaintiff has just discovered also that the width of the Bolton Street is only NINE (9) METERS and since the defendant is now asphaltting the said Bolton Street, plaintiff has filed this complaint in order to quiet her title to the said portion of 2.5 meters by 10 meters as shown in the plan enclosed in red pencil on Annex "A" hereon because the continued occupation of said portion by the defendant has cast a cloud of doubt on the title of the plaintiff over the portion of plaintiff's Lot No. 77-B-2 now being occupied by Bolton Street, valued at four hundred pesos per square meters."

After quoting the material allegations of the complaint as above set forth, the court a quo analyzed them carefully and scrutinizingly, and came up with the conclusion that the allegations of the complaint state no cause of action. Thus -

"The allegations in the complaint that the Bolton Street encroached on the lot of the plaintiff and that the defendant had continuously occupied the portion so encroached upon do not, contrary to the conclusion of the plaintiff found in the complaint, cast '... a cloud of doubt on the title of the plaintiff over...' said portion which would justify this action."

In her present petition, petitioner assigned as error of the court a quo the following:

"1. THE LOWER COURT ERRED IN DECLARING THAT THE BOLTON STREET AS AN EASEMENT MUST REMAIN A BURDEN ON LOT 77-B-2 (LOT IN QUESTION) PURSUANT TO SECTION 39 OF ACT 496 ON THE GROUND THAT IT IS SUBJECT TO EASEMENT OF PUBLIC HIGHWAY.

"2. THE LOWER COURT ERRED IN DECLARING THAT THE PORTION OF THE LAND OF PETITIONER ENCROACHED UPON BY THE RESPONDENT CITY OF DAVAO'S BOLTON STREET DOES NOT CAST A CLOUD OF DOUBT ON THE TITLE OF PETITIONER.

"3. THE LOWER COURT ERRED IN DECLAR-ING THAT ASSUMING THE FACTS ALLEGED IN THE COMPLAINT TO BE TRUE, A JUDGMENT UPON THE SAME IN ACCORDANCE WITH THE PRAYER COULD NOT BE RENDERED.

"4. THE LOWER COURT ERRED IN DISMISSING THE COMPLAINT FOR LACK OF CAUSE OF ACTION."

As alleged by petitioner, the lot in question, Lot No. 77-B-2, which she bought in 1956, was part of Lot No. 77-B, which was in turn originally a portion of Lot No. 77, covered by O. C.T. No. 683, issued on July 21, 1911. For the lot she bought, she received Transfer Certificate of Title No. T-7000.

In 1970, petitioner discovered that the Bolton Street of the City of Davao had encroached upon her lot a portion of 2.5 meters wide and 10 meters long, along said Street, or an area of 25 square meters. She also discovered that Bolton Street was delimited to nine (9) meters wide, but the proposed width was 15 meters, and in that same year 1970, the Bolton Street had already encroached on her lot, on the northwestern part thereof, to the extent as above stated (par. 7, Complaint, Annex A, to Petition).

From the allegations of the complaint as set forth above, as well as in the questioned Order quoted earlier, We agree with respondent judge that the complaint states no cause of action upon which to render judgment in favor of petitioner, even assuming the said allegations to be true, as, indeed, in a motion to dismiss for lack of cause of action, the allegations of the complaint must be hypothetically admitted.[2]

It appears on the face of the complaint that Bolton Street has been where it is from time immemorial. When the mother title of petitioner's Transfer Certificate of Title No. T-70000, which is O.C.T. No. 638, was issued in 1911, it was issued subject to the provisions of Section 39 of Act 496 which reads:

"Section 39. Every person receiving a certificate of title in pursuance of a decree or registration, and every subsequent purchasers of registered land who takes a certificate of title for value in good faith shall hold the same free of all encumbrances, except those noted on said certificate, and any of the following encumbrances which may be subsisting namely:

x x x x

"Third. Any public highway, way, private way, xxx or any government irrigation, canal, or lateral thereof xxx."

From the foregoing provision, Bolton Street which is a public highway, already subsisting when O.C.T. No. 638 was issued, as this fact is apparent too from the face of the complaint itself, is deemed to have attached as a legal encumbrance to the lot originally registered, Lot No. 77, notwithstanding the lack of an annotation thereof on O.C.T. No. 638. Petitioner, therefore, cannot rely, as she almost entirely does for the relief she seeks, on the aforequoted provision, which she had repeatedly cited but without making mention, perhaps conveniently, of the exception as expressly provided in the later part of the legal provision invoked (Sec. 39, Act 496).

If from the undisputed fact that when Lot 77 was registered, Bolton Street had already been a legal encumbrance

on said lot, pursuant to Section 39 of Act 496, contrary to petitioner's theory based on the same legal provision, but omitting the portion pertinent to the instant case, there can be no gainsaying the fact that petitioner's lot, Lot No. 77-B-2, which admittedly was originally a part of Lot No. 77, must have to remain subject to the same legal encumbrance of a public highway.

From her own allegations in her complaint, Bolton Street cannot be a discontinuous easement as she claims it to be, which may not be acquired by prescription. Nonetheless, whether the mode of acquisition of the easement that Bolton Street is, would be only by virtue of title, as petitioner contends, this is not material or of any consequence, in the present proceedings, once it indubitably appears as it does, from the allegations of the complaint itself, that Bolton Street constituted an easement of public highway on Lot No. 77, from which petitioner's lot was taken, when the said bigger lot was originally registered. It remained as such legal encumbrance, as effectively as if it had been duly noted on the certificate of title, by virtue of the clear and express provision of Section 39 of Act 496, it being admitted that at the time of the registration of Lot 77, the public highway was already in existence or subsisting. This fact erases whatever cause of action petitioner may have to bring the complaint she filed in the court a quo for quieting of title on a portion of the street which she claims to be part of her lot, free from encumbrance of any kind. The Order complained of has only this legal postulate as its basis. Nothing has been mentioned therein on the acquisition by the City of Davao of the lot in question by prescription, and a discussion of this matter as is found in petitioner's brief[3] would be entirely irrelevant.

WHEREFORE, no reversible error having been found in the Order complained of, the same is hereby affirmed, and the instant petition, dismissed. Costs against petitioner.

SO ORDERED.

Barredo, (Chairman), Aquino, and Concepcion, Jr., JJ., concur.
Abad Santos, J., in the result.

[1] p. 45, Rollo.

[2] *Martinez vs. United Finance Corporation*, 34 SCRA 524; *La Suerte Cigar and Cigarette Factory vs. Central Azucarera del Danao*, 23 SCRA 686; *Republic Bank vs. Cuaderno, et al.*, 19 SCRA 671; *PNB vs. Hipolito, et al.*, 13 SCRA 20; *Lim vs. De los Santos*, 8 SCRA 798).

[3] pp. 10-13, Petitioner's Brief.

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