

SPOUSES GAUDENCIO LAMBAN A.K.A. GAUDIOSO LAMBAN AND ESTELITA OCIO; SPOUSES JEREMIAS OCIO AND SABINA LIBATON; AND SPOUSES LUCIANO OCIO AND FLORDELIZA OCIO, PLAINTIFFS-APPELLANTS,...

Ponente: QUIJANO-PADILLA, J.

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QUIJANO-PADILLA, J.:

This is an appeal on the Decision[1] of the Regional Trial Court (RTC), Branch 47, Tagbilaran City in Civil Case No. 7728 dated June 17, 2013 dismissing plaintiffs-appellants' complaint for easement of right of way.

The Antecedents

Three (3) Ocio siblings, namely: Estelita, Jeremias and Luciano, Jr., together with their respective spouses Gaudencio Lamban, Sabina Libaton (Sabina) and Flordeliza Ocio (Flordeliza) (all to be collectively referred as plaintiffs-appellants), filed a suit against defendant-appellee, their brother Celso Ocio (Celso) for easement of right of way and damages.

During the trial of the case, the plaintiffs-appellants' version was testified to by Estelita; her sisters-in-law Sabina and Flordeliza; the mother of the Ocio siblings Josefina Ocio (Josefina); and geodetic engineer Jose Yu (Engr. Yu).

From their testimonies, it could be gathered that Estelita, Jeremias and Luciano, Jr. own lots situated in Cogon District, Tagbilaran City, Bohol, which properties are covered by Transfer Certificates of Title (TCT) No. T-50542,[2] TCT No. T-50972[3] and TCT No. T-27259,[4] respectively. In reference to the survey plan submitted by the Ocio siblings as Exhibit E,[5] Estelita's house is situated in a portion indicated as Lot 1163-A[6] and adjacent to her house is Luciano, Jr.'s residence. Jeremias' house is on a portion indicated as Lot 1163-D-4.

Meanwhile, Celso owns Lot 1163-D-3, with an area of 411 square meters and covered by TCT No. T-27259.[7] His lot abuts the public road and adjoins the lands of his siblings. Based on the survey plan, Estelita and Luciano's houses are situated in the northwestern part above Celso's lot, while Jeremias' residence is on the eastern part next to Celso's property. The survey plan was prepared by Engr. Yu who claimed that it was Celso who engaged his services.

The Ocio siblings alleged that for a period of more than 30 years already, they had been using a portion of Celso's land as passage in going to and out of their properties. They previously agreed with Celso that they would pay for the reasonable value of the portion which they intended to use as right-of-way in order for them to have access to the public street, specifically San Jose St., Tagbilaran City. Unfortunately, Celso reneged on their agreement. He would no longer convey the portion to them as he was planning to construct a commercial building on his lot. However, plaintiffs-appellants averred that if Celso would close his property, they would have no more access in going to the public road. They needed the road-right-of-way since the side and the back of Jeremias' house were surrounded with a firewall; and Luciano's house had a concrete wall in front which hindered them from passing

through towards the public road.

Plaintiffs-appellants claimed that there were improvements on the land of Celso consisting of a small house made of light materials and a sari-sari store owned by Josefina. Their mother, however, was willing to have the structures demolished in order for the right-of-way to be established.

Plaintiffs-appellants formally offered their exhibits.[8] After these were admitted,[9] defendant-appellee filed an Omnibus Motion to Conduct Ocular Inspection and Survey[10] which the trial court granted in its Order[11] dated August 3, 2011. The ocular inspection was scheduled on August 25, 2011 at 2:30 o'clock in the afternoon and was conducted accordingly.

Meanwhile, the witnesses for the defense were geodetic engineer Roberto Wilson Genovia (Engr. Genovia), Celso, and Carlito Ingking (Carlito), a second degree cousin of the Ocio siblings.

Engr. Genovia was engaged by Celso to prepare an "as built plan survey,"[12] which is a type of survey reflecting the existing structures on the plan based on the true meridian, meaning, the survey is through and through despite the presence of the structures. Engr. Genovia's survey reflected the structures on Celso's lot, as well as those found on the surrounding properties.

According to Carlito, there used to be a passage at the right side of Luciano's house but it was permanently closed when the latter put up a fence on his property. Meanwhile, Celso testified that there used to be an access from Jeremias' house going to the public road, which was wide enough to accommodate a tricycle. Jeremias, however, constructed a fence at the side of his house which obstructed the passage. Celso claimed that he was actually the one who spent for all the improvements situated on his lot as all the structures thereon were constructed from his income which he gave to his mother Josefina. He denied having commissioned Engr. Yu to prepare the survey plan offered as evidence by plaintiffs-appellants. He did not know anything about such survey and only saw it for the first time when his mother and siblings summoned him before the barangay authorities. He asked them for a copy thereof but they did not give him any.

After the defense rested, plaintiffs-appellants again presented Josefina as rebuttal witness. Her testimony was aimed at bolstering her claim that she, and not Celso, owned the structures on the latter's lot.

After the proceedings, the trial court ruled in favor of Celso. The dispositive portion of its decision, reads, viz.:

WHEREFORE, prescinding the foregoing disquisition, judgment is hereby rendered denying the petition for easement of a right of way.

Consequently, the case is ordered dismissed.

No award for damages.

SO ORDERED.[13]

Aggrieved, plaintiffs-appellants appealed[14] to Us and assigned the following errors,[15] to wit:

THE TRIAL COURT ERRED:

- IN CONCLUDING THAT PLAINTIFFS FAILED TO SUFFICIENTLY ESTABLISH THAT THEY HAVE NO ADEQUATE OUTLET TO THE PUBLIC HIGHWAY.
- IN CONCLUDING THAT THE PROPOSED RIGHT OF WAY IS AT A POINT WHICH IS NOT LESS PREJUDICIAL TO THE SERVIENT ESTATE.
- IN CONCLUDING THAT THE ISOLATION OF THE ESTATES OF THE PLAINTIFFS, BEING THE

DOMINANT ESTATES ARE DUE TO THEIR OWN ACTS.

This Court's Ruling

The appeal is without merit.

In order to be entitled to a legal easement of right of way, the following requisites must be satisfied:

- that the dominant estate is surrounded by other immovables and has no adequate outlet to a public highway;
- that proper indemnity has been paid;
- that the isolation was not due to acts of the proprietor of the dominant estate;
- 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.[16]

In this case, the trial court presumed that plaintiffs-appellants were willing and able to pay the proper indemnity, hence, the satisfaction of the 3[rd] requirement. Unfortunately, the trial court found the first, third and fourth requisites wanting.

The trial court, on the basis of the parties' evidence and the ocular inspection it conducted on the premises, adjudged that there were existing adequate access from plaintiffs-appellants' properties in going to the public road. However, two of these passages were blocked by the fences of Luciano and of Nenita Ocio-Rabon (Nenita), another sibling of the herein parties.

The trial court detailed its observations regarding the existing passages in the premises and the cause of the isolation of plaintiffs-appellants' estates, as follows:

Let us now subject to microscopic scrutiny the established facts and evidence obtaining in order to determine whether all the elements for an easement of a right of way are in attendance in the instant case.

xxx xxx xxx

As to the requirement that there is not other adequate outlet to the public highway, the court notes that there are other options which plaintiffs could have availed of and used as an access road to the public highway without necessarily disturbing the land of the defendant.

For instance, plaintiff Luciano Ocio and Flordeliza Ocio would not have any need for an access road at all if only they did not construct and build a concrete fence in their own lot thereby depriving them and their adjacent owners particularly their co-plaintiffs Gaudencio Lamban and wife Estelita Ocio who is his sister, a good access to the city road which is San Jose Street, or at least, they should have left a space therein as an open access enough for them and their vehicles to pass.

Another option is the land of Nenita Ocio-Rabon who unfortunately constructed also a fence on her land up to another lot that encroached to the defendant's lot, thereby depriving Jeremias Ocio and Sabina Libaton-Ocio of their access towards San Jose Street.

Besides, plaintiffs have another option by passing thru the outlet of the land owned by a certain Isabel Lim (Lot 1163-D-2) and Eddie Uy (Lot No. 1163-D-4) which are vacant. In fact, plaintiffs Jeremias Ocio and Sabina Libaton-Ocio are currently using the space as outlet of their vehicle from San Jose Street to their residence. Furthermore, Estelita Ocio in her testimony stated that she and the rest of her siblings are currently using the aforesaid vacant lot.

Undoubtedly, if only plaintiffs Gaudencio Lamban and Estelita Ocio will remove or demolish a portion of their concrete fence which in the first place was of their own making, to be utilized as their access road then, there

could have been no problem at all.[17]

Plaintiffs-appellants resisted the above findings of the trial court. In arguing for their first assignment of error, they faulted the trial court for declaring that there were existing outlets connecting their properties to the public road. Plaintiffs-appellants argued that while there may be vacant lots near their residences, these lands do not adjoin or were far from the public streets. The trial court erroneously observed that there were other options for their passage. Even if Luciano would remove his fence, it still would not provide him access to San Jose street since his fence was only confined to the premises of his land. If the passage would be created by removing the fence of their other sibling Nenita, there still would be no access to the public road because they would still need to demolish the house of their mother Josefina before they could reach San Jose street. The other option pointed out by the trial court, specifically that of passing through the lands of Isabel Lim and Eddie Uy, could not also be feasible since at the time the case was heard, there was already an ongoing construction on these properties.

Plaintiffs-appellants' assertions are insufficient to overturn the trial court's findings. We note and emphasize that the trial court made an ocular inspection and the findings in the assailed decision were based on its observations during such inspection. The premises subject of this easement suit is not physically before Us, but the trial court had a good opportunity to actually see and observe the same by going to the area.

Ocular inspection by a court of the subject-matter in controversy has been recognized by many decisions of the Supreme Court.[18] An ocular inspection by the court has frequently been made the basis of a judgment of the Supreme Court sustaining the decision of the trial court. We do not, therefore, find it sound to belittle the evidentiary value of the trial court's findings and substitute the same with Our own. Besides, the decision of the trial court shows that it was not premised solely on the observations during the ocular inspection, but was likewise predicated on other evidence presented by the parties. The records actually bear out the existence of the existing passages pointed out by the trial court.

Even granting that the open area in the lands of Isabel Lim and Eddie Uy, which are used in going to Estelita and Luciano's house, were already utilized for the on-going construction thereon, this was not the only access in going to the public highway. As aptly pointed out by the trial court, there were other available passages that could be used without necessarily disturbing the land of the defendant. The testimony of witness Carlito satisfactorily detailed the other available access that plaintiffs-appellants could use, specifically: the passage obstructed by the fence of Luciano; the passage obstructed by the fences of Jeremias and Josefina; and the existing right-of-way of about 1 ½ meters provided by Ondoy Ingking, a cousin of Carlito.[19]

Plaintiffs-appellants cannot even exploit the allegation that their mother's house would still have to be demolished in order to utilize the passage blocked by Nenita's fence. This matter was clarified during the cross-examination made by plaintiffs-appellants' counsel on Celso, which revealed the following:

ATTY. BUTRON:

Q:

How about your mother[,] is it not that if we would establish a right-of-way along this line on the southern part of your property near the house of your mother will be demolished?

A:

No sir, there is already an existing passage even right now because my sister is living behind this house and

she is passing in this passage.

Q:

How big is that passage?

A:

Enough to pass.

Q:

For a person?

A:

Enough to pass even for a tricycle because I have a tricycle at that time and passing in this area sir and there is a garage for a car sir.

xxx xxx xxx

Q:

Is it not that your tricycle which was parked at the house of your parents when you were still residing I that place?

A:

No, sir it was parked [in front] of my house when I was residing at the back portion of the house of my parents.[20]

The existence of the passage referred to by Celso was even confirmed by Flordeliza, plaintiffs-appellants' own witness.[21] Further, it was revealed during the trial that there were other Ocio siblings whose houses were also situated behind their mother's house, yet they did not join plaintiffs-appellants in the suit seeking for a right-of-way. This circumstance only bolsters Celso's claim that there is an existing passage in the area that would serve the needs of the estates behind their mother's house.

It is, thus, apparent that there is no real necessity for the easement. Plaintiffs-appellants are seeking it because as testified to by Estelita, she just feels comfortable passing by Celso's land.[22] Unfortunately, the convenience of the dominant estate has never been the gauge for the grant of compulsory right of way. 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.[23]

Going now to the second assigned error, plaintiffs-appellants insisted that the grant of a road-right-of-way to them would not be prejudicial to Celso's estate since he would still have an adequate area for his envisioned commercial building. As for the structures on Celso's lot, plaintiffs-appellants maintained that Celso would not be prejudiced if these would be destroyed in favor of the right of way, considering that Celso is not even the owner of the structures but their mother Josefina.

Plaintiffs-appellants' contentions still lack persuasive value. The prejudice that would be caused by the establishment of the sought right-of-way to Celso's estate was discussed by the trial court, as follows:

xxx the Court observed during the ocular inspection that there are at least five (5) structures found in the subject land to be affected by the proposed road right of way, namely: a nipa hut, portion of the apartment, sari-sari store, another nipa hut and a toilet which has to be totally or partly demolished, if the demand will be granted.

Besides, the frontage of the land of the defendant is only 13.20 meters, hence, if plaintiffs' right of way will be granted by at least three (3) meters in width, what is left for the defendant is only 9.20 meters as frontage, which will be useless if he constructs a commercial building in the area as envisioned.

xxx xxx xxx

xxx it will certainly be least prejudicial if plaintiffs Jeremias Ocio and Sabina L. Ocio will ask a right of way from Nenita Ocio-Rabon since only part of the fence of the latter and part of the terrace of plaintiff Jeremias Ocio will be partially demolished in order for them to have an adequate outlet to the road. The same holds true in the situation of Luciano and Flordeliza Ocio since only a part of their fence will be removed in order for them and co-plaintiffs Gaudencio Lamban and Estelita Ocio to have an outlet and passage to the city road, unlike that of the defendant which requires the demolition of four to five structures.[24]

As We have earlier discussed, We give due credit to the trial court's factual findings. The same must carry great weight in the evaluation of evidentiary facts, and in the absence of any indication showing grave error committed by trial court, the appellate court is bound to respect such findings of fact.[25]

We also point out that due to plaintiffs-appellants' failure to establish the necessity of taking a portion of Celso's property for their road-right-of-way, We need not even belabor to discuss the element pertaining to the least prejudice to be caused on the servient estate. Yet, We find it necessary to stress that even granting that Celso is not indeed the owner of the structures that would be damaged, this circumstance is of no moment, as the taking of 144 square meters from his 411-square meter lot, and leaving him with only 267 square meters, is prejudice in itself. Clearly, plaintiffs-appellants' desired road-right-of-way is an improvident imposition on Celso's property that unjustly deprives him of its optimum use and enjoyment.

By its very nature, and when considered with reference to the obligations imposed on the servient estate, an easement involves an abnormal restriction on the property rights of the servient owner and is regarded as a charge or encumbrance on the servient estate. Thus, it is incumbent upon the owner of the dominant estate to establish by clear and convincing evidence the presence of all the preconditions before his claim for easement of right of way may be granted.[26] Plaintiffs-appellants utterly failed in this regard.

Finally on the third assigned error, plaintiffs-appellants faulted the trial court for finding that the isolation of their estates were of their own doing. According to them, their properties and that of Celso's were inherited from their father. Hence, even without erecting fences on their properties, their estates were already isolated when they were assigned to interior lands that do not connect to public roads. The isolation, therefore, was caused by the manner the estate of their late father was subdivided. Plaintiffs-appellants cited Article 652 of the Civil Code which provides that when a piece of land acquired by partition is surrounded by other estates of a co-owner, he shall be

obliged to grant a right-of-way. Invoking the said article, they contended that Celso, being a co-owner of the partitioned lot, is obliged to grant them a right-of-way even without indemnity.

Plaintiffs-appellants' claim is unsupported by evidence. On the contrary, the testimonies of plaintiffs-appellants' own witnesses negated that the dominant and servient estates involved in this case came from the partition of the estate of the parties' father. Estelita testified that the land was bought by Celso through their mother when the latter was still single.[27] Josefina also confirmed this when she testified that she acquired the lot by purchase using the allotment she received and it was registered in Celso's name.[28] Further belying plaintiffs-appellants' claim is the authenticated copy from the Office of the Register of Deeds of the Deed of Extrajudicial Settlement of Estate with Simultaneous Sale[29] executed by the heirs of Hipolita Benong, which document was attached by Celso in his Appellee's Brief. Although the document was not part of Celso's documentary evidence during the trial, it sufficed to negate plaintiffs-appellants' claim regarding the origin of the parties' respective properties. The document unequivocally shows that Celso's acquisition of Lot 1163-D-3 was pursuant to the sale to him made by the heirs of Hipolita Benong in the said document. With this factual milieu, Article 652 of the Civil Code finds no application. Plaintiffs-appellants' case, therefore, had to be evaluated in accordance with the requirements for a compulsory easement of right of way under Articles 649 and 650 of the Civil Code.

WHEREFORE, the appeal is DENIED. The Decision of the Regional Trial Court (RTC), Branch 47, Tagbilaran City in Civil Case No. 7728 dated June 17, 2013 is hereby AFFIRMED.

SO ORDERED.

Hernando, Chairperson and Azcarraga-Jacob, JJ., concur.

[1] Record, pp. 223-235.

[2] See Folder indicated as Index of Exhibits, p. 1.

[3] See Folder indicated as Index of Exhibits, p. 2.

[4] See Folder indicated as Index of Exhibits, p. 3.

[5] See Folder indicated as Index of Exhibits, p. 4.

[6] See Testimony of Estelita Ocio Lamban dated July 16, 2010, p. 9.

[7] See Folder indicated as Index of Exhibits, p. 16.

[8] See Formal Offer of Exhibits, record, pp. 92-95.

[9] See Order dated June 17, 2011, record, p. 99.

[10] Record, pp. 106-108.

[11] Record, p. 111.

[12] See Folder indicated as Index of Exhibits, p. 15.

[13] Record, pp. 234-235.

[14] See Notice of Appeal, record, pp. 237-238.

[15] Rollo, pp. 16-18.

- [16] See Articles 649 and 650 of the Civil Code and *Quintanilla v. Abangan*, G.R. No. 160613. February 12, 2008.
- [17] Record, pp. 231-232.
- [18] See *Que Quay v. The Insular Collector of Customs*, G.R. No. L-10992. January 6, 1916.
- [19] See TSN dated March 19, 2012, Folder Index of Exhibits, pp. 157-159, 172-175 and 191.
- [20] See TSN dated June 29, 2012, Folder Index of Exhibits, pp. 218-219.
- [21] See TSN dated February 28, 2011, Folder Index of Exhibits, pp. 90-91.
- [22] See TSN dated August 16, 2010, Index of Transcript of Stenographic Notes, p. 56.
- [23] See *Dichoso, Jr. v. Marcos*, G.R. No. 180282. April 11, 2011.
- [24] Record, p. 233.
- [25] See *Lagon v. Hooven Comalco Industries, Inc.*, G.R. No. 135657. January 17, 2001.
- [26] See *Cristobal v. Court of Appeals*, G.R. No. 125339. June 22, 1998.
- [27] See TSN dated August 4, 2010, Index of Transcript of Stenographic Notes, p. 35.
- [28] See TSN dated April 15, 2011, Index of Transcript of Stenographic Notes, p. 103.
- [29] Rollo, pp. 78-79.

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