

**WILREDO PALMA[] AND TERESITA PALMA, PLAINTIFF-APPELLANTS,
VS. FRANCISO P. LIM AND MARIBEL PARDO-LIM.
DEFENDANT-APPELLEES.**

Ponente: CONTRERAS, J.

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CONTRERAS, J.:

On appeal is the Decision[1] dated May 9, 2011 of the Regional Trial Court (RTC), Branch 12, Zamboanga City, in Civil Case No. 4922 for Grant of Easement with Damages.

Plaintiffs, now appellants, Wilfredo Palma and Teresita Palma, filed on May 18, 1999, a Complaint[2] for Grant of Easement with Damages against defendants, now appellees, before RTC, Branch 12, Zamboanga City alleging that they are the registered owners of a parcel of land located at Dona Benita Drive, Canelar, Zamboanga City covered by Transfer Certificate of Title (TCT) No. T-73,814,[3] and more particularly described as follows:

“A parcel of land (Lot 1 of the consolidation subdivision plan, Pcs-09-[000518], being a portion of Lots 1 & 3, Pcs-09-000328, LRC Cad. Rec. No. 7880), situated in the Barrio of Canelar, City of Zamboanga, Island of Mindanao. Bounded on the West line 2-3; on the North line 3-4 by Lot 3; line 4-5; on the East line 5-6 by Lot 2, both of the consolidation subd. Plan; on the South line line 6-1-2 by Lot 622-C-6-A Psd-09-004303 existing right of way xxx containing an area of ONE THOUSAND FIFTY TWO (1,052) SQUARE METERS ... xxx”

Appellants alleged that from their property (the dominant estate), the nearest possible and convenient outlet to the public highway is through a cemented road right-of-way (or the subdivision alley known as Lot No. 622-C-7, Psd-1113525) donated by Mrs. Benita Julian to the City Government. To reach the said road right-of-way, however, they first have to pass through the only front exterior lot which is a two-meter-wide strip of land (the servient estate) covered by TCT No. T-62,474[4] in the name of the appellees, Francisco Lim and Maribel Pardo-Lim, containing an area of Two Hundred Seventy Four (274) square meters, and is situated between their property and the road right-of-way. The servient estate which runs lengthwise and parallel to the existing road right-of-way up to the boundary of appellant's another property was previously sold to the appellees by the Julian Family, the previous owners of most of the lots situated in that area including that of the dominant estate.

It was appellants' belief that the servient estate will be added up to the existing road right-of-way such that when the latter was cemented, one-half portion of the servient estate, which the public and residents of the area used as part of the right-of-way was also cemented by the City Government. On August 16, 1994, the Sangguniang Panlungsod of Zamboanga City also issued Resolution No. 1087[5] resolving to acquire the servient estate.

However, in November 1998, appellees constructed a fence wall through the length of the servient estate effectively depriving the appellants of any ingress and egress from the dominant estate. Their objections to the construction of the wall and offers to pay and of possible compromise relative to the grant of an easement of a right-of-way through the servient estate were to no avail.

In Answer,[6] appellees deny appellants' claim that the servient estate is a right-of-way. They, instead, asserted that the construction of a fence was a mere exercise of their ownership over the servient estate and that it was

meant to safeguard their persons and their properties from criminal elements. If the fence had sealed off appellants' outlet to the subdivision alley, they cannot be compelled to grant a right-of-way to the former because the isolation of the dominant estate was due to the fault of its former owner.

Appellees claim that in 1980, appellee Francisco Lim asked permission from Benita Ledesma, the registered owner of a subdivision alley identified as Lot No. 622-C-7, Psd-1113525 (or the existing cemented road right-of-way), to allow him to fence off the northwest side of said alley to prevent criminal elements from roaming and hiding in the vacant lot adjacent to the alley and in front of his residence. However, Ledesma refused and instead offered to sell to Francisco a 2-meter-wide strip of land which runs parallel to the alley for his proposed fence, excluding only a portion measuring 3 meters wide to be used as Ledesma's exit from her own lot. Accepting the offer, Francisco Lim purchased an area containing 274 square meters that was segregated from Lot No. 622-C-6 pursuant to approved subdivision plan Psd-09-004303. Consequently, a Deed of Absolute Sale was executed in his favor by Ledesma on December 5, 1980, and TCT No. T-62,474 for Lot No. 622-C-6-A containing an area of 274 square meters was, thereafter, issued in the name of Francisco.

Subsequently, Ledesma caused the consolidation of Lot No. 621-H (L.R.C.), Psd-163294 and Lot No. 622-C-6-B, Psd-09-004303 and then subdivided the same into 3 lots under the consolidation-subdivision plan Pcs-09-000328 approved on January 23, 1981. Then, Ledesma consolidated again Lot 1 and 3 of Pcs-09-000328 and subdivided them again into 3 lots. The consolidation-subdivision was approved on February 20, 1984, under Pcs-09-000518. With said subdivision, appellees claim that Lot 1, Psd-09-000518, now registered under appellants' name, was isolated but such isolation was due to the approval of Pcs-09-000518 on the behest of Ledesma, the previous owner. When the appellants purchased the property, they already knew of its location and that it was bounded and blocked from the Sta. Maria road and the subdivision alley by the other lots owned by Ledesma. Since its isolation was due to the acts of its previous owner, appellees claim that appellants cannot now legally compel them to grant the former a right-of-way.

On May 9, 2011, after trial, the RTC rendered a Decision dismissing the case, the dispositive portion of which states:

WHEREFORE, in light of all the foregoing and finding the plaintiffs' prayer for the establishment or granting of an easement of right of way over the defendants' property unmeritorious and without legal and factual basis, the same is hereby DENIED and the above-entitled case is hereby ordered DISMISSED. No pronouncement as to cost.

Hence, the present appeal with the appellants ascribing to the lower court the lone error in that the Court a quo erred in dismissing their case.

The Court's Ruling

The appeal is bereft of merit.

An easement is a real right on another's property, corporeal and immovable, whereby the owner of the latter must refrain from doing or allowing somebody else to do or something to be done on his property, for the benefit of another person or tenement. Easements are established either by law or by the will of the owner. The former are called legal, and the latter, voluntary easements.[7]

The grant of a legal easement of right-of-way is governed by Articles 649 and 650 of the Civil Code which provides:

Article 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 damages caused by such encumbrance.

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

Article 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.

To be entitled to an easement of right-of-way, the following requisites should be met:

- The dominant estate is surrounded by other immovables and has no adequate outlet to a public highway;
- There is payment of proper indemnity;
- The isolation is not due to the acts of the proprietor of the dominant estate; and
- The right-of-way claimed is 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.

The onus of proving the existence of these prerequisites lies on the appellants, the owner of the dominant estate.[8]

Here, records reveal that pending trial of the case, appellant Wilfredo Palma died and was, hence, substituted by his heirs, namely: Teresita Palma, co-plaintiff, and his children Wilter Y. Palma, Jasmin Y. Palma, Eric Y. Palma, and Dirkie Y. Palma. Before his death, however, Wilfredo Palma donated the dominant estate to all of his children as testified to by his son Eric Palma and as shown in a Deed of Donation of Real Properties Inter Vivos,[9] executed by the deceased on January 11, 2003. The dominant estate is now registered in the names of the deceased's children under TCT No. T-180,208.[10]

Likewise, as found by the RTC, evidence would show that appellants or their immediate families are also the owners of several properties surrounding the dominant estate. Apparently, Lot 3-B-1, Psd-09-010586 covered by TCT No. T-180,212; Lot No. 3-A, Psd 09-008511, covered by TCT No. T-180,210; and Lot No. 2-A, Psd 09-008511, covered by TCT No. T-180,209 was admittedly owned and registered under the names of Wilter Y. Palma, Jasmin Y. Palma, Eric Y. Palma, and Dirkie Y. Palma, children of the deceased plaintiff Wilfredo. These lots were also subject of another Deed of Donation of Real Properties Inter Vivos[11] executed by the deceased in favor of his children on January 11, 2003. As appellees Exh. "5" which is a Subdivision Plan of Lot 3-5, Psd-09-008511 as surveyed for Benita Ledesma and approved on May 22, 1987, would show, these lots including the dominant estate (Lot No.1, Pcs-000518), are all contiguous with each other. Further, Exh. "5" shows that one of these lots, Lot 3-B-1, Psd-09-010586 extends to and adjoins Lot 2, Psd 09-000328, which in its TCT No. T-180,212 is in the name of Benita Ledesma, provides for a perpetual easement of a right of way. Thus, this property with a perpetual easement adjoins the existing cemented road right of way or the subdivision alley going to the highway. Evidently, as the RTC declared, appellants' contention that the servient estate is the most convenient passage for them to the existing road right-of-way leading to the highway is specious as there in fact

exist an adequate and existing access for them to the said existing cemented road right-of-way; that is, passing through the properties that they presently own and through the perpetual easement of a right-of-way granted by Benita Ledesma.

Clearly, records would prove that the RTC did not err in dismissing the complaint for the requisites for grant of an easement of a right-of-way are absent. Indeed, appellants failed to convincingly show by competent evidence that the dominant estate is surrounded by other immovables by other persons or entities and has no adequate outlet to a public highway. No evidence was likewise adduced by appellants to prove that the easement they seek to impose on the appellees' property is to be established at a point least prejudicial to the servient estate. As the RTC had correctly declared further, there was likewise no showing that appellants has paid, tendered, or offered to pay a definite and proper indemnity due the appellees for the easement that they seek.

It must be stressed that, 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. 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.[12]

Appellants' contention that an access to the public highway through their properties is illogical as it would be far and circuitous for they would have to pass through other properties deserves little consideration. The convenience of the dominant estate has never been the gauge for the grant of compulsory right of way. To be sure, the true standard for the grant of the legal right is "adequacy." [13]

Hence, in *Dichoso v. Marcos*, [14] petitioners' prayer for a right-of-way was denied since there is an existing right-of-way through the other adjacent lot owned by the Spouses Arce. Though petitioners claim that the said outlet is longer and circuitous as they have to pass through other lots owned by different owners before they could get to the highway, the outlet was determined to be adequate for the dominant estate's needs.

In *Cristobal v. CA*, [15] the easement prayed for was disallowed 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. This outlet was determined to be sufficient for the needs of the dominant estate.

In *Floro v. Llenado*, [16] a right of way over petitioner's property was likewise denied 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.*, [17] the prayer for an easement was likewise refused even if petitioner had to pass through lots belonging to other owners, as temporary ingress and egress, and wherein the 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.

While it could be that, as appellants claim, the alternative way may be long and circuitous for them, still we must not lose sight of the fact that it is a well-entrenched doctrine that in order to justify the imposition of an easement of right of way, there must be real, not fictitious or artificial, necessity for it. Mere convenience for the dominant estate is not what is required by law as the basis of setting up a compulsory easement. Even in the face of necessity, if it can be satisfied without imposing the easement, the same should not be imposed. [18] Hence, if appellants could very well use their own properties in order for them to gain access to a public road, then they

should endeavour to do the same rather than burden the property of the appellees with a right-of-way.

In addition, appellants claim that the servient estate had already formed part of the existing road right-of-way such that it was already concreted by the government and that it was already being used as a right-of-way is unsubstantiated. In truth, Resolution No. 1087[19] of the Sangguniang Panlungsod of the City of Zamboanga shows that the City was merely directing the Mayor to negotiate for the possible donation of the servient estate as a right-of-way. Thus, apparently, the appellees are well within their rights when they constructed a fence in the servient estate.

WHEREFORE, foregoing premises considered, the instant appeal is DISMISSED and the Decision[20] dated May 9, 2011 of the Regional Trial Court Branch 12, Zamboanga City, in Civil Case No. 4922 is hereby AFFIRMED in toto.

SO ORDERED.

Lloren, J., Ch., and Santos, JJ., concur.

[*] Died on January 14, 2003, and was substituted by his heirs namely: Teresita Palma, Wilter Y. Palma, Jasmin Y. Palma, Eric Y. Palma, and Dirkie Y. Palma; Notice of Death with Substitution of Deceased Plaintiff, records, pp. 51-52.

[1] Records, pp. 337-347.

[2] Records, pp. 1-5.

[3] Exh. "B" for plaintiff-appellants, records, pp. 180-181.

[4] Exh. "D" for plaintiff-appellants, records, p. 184.

[5] Exh. "F", for plaintiff-appellants, records, p. 186.

[6] Records, pp. 24-29.

[7] Unisource Commercial and Development Corp. vs. Joseph Chung, et al., G.R. No. 173252, July 17, 2009.

[8] Spouses Victor Valdez and Jocelyn Valdez, etc. vs. Spouses Francisco Tabisula and Caridad Tabisula, G.R. No. 175510, July 28, 2008.

[9] Exh. "1" for the defendant-appellees, records, pp.319-321.

[10] Exh. "C" for the plaintiff-appellants, records, pp. 182-183.

[11] Exh. "2" " for the defendant-appellees, records, pp. 322-324.

[12] Crispin Dichoso, et al. vs. Patrocinio Marcos, G.R. No. 180282, April 11, 2011.

[13] Crispin Dichoso, Jr., et al. vs. Patrocinio Marcos, G.R. No. 180282, April 11, 2011.

[14] Ibid.

[15] G.R. No. 125339, June 22, 1998.

[16] G.R. No. 75723, June 2, 1995.

[17] G.R. No. 75905, October 12, 1987.

[18] Supra, note 13.

[19] Exh. "F", for plaintiff-appellants, records, p. 186.

[20] Records, pp. 337-347.

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