

**FISCAL LUIS R. BOCALBOS, JR. AND SANTOS BONAGUA, JR.,
PLAINTIFFS-APPELLANTS, GREGORIO BONGAO, JOSEPH CALLOS,
CRISTITO CANILLO, CONSOLACION CELESTIAL, PATRIA SANDE AND
JESUS BONZ...**

Ponente: SANTIAGO-LAGMAN, J.

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SANTIAGO-LAGMAN, J.:

We are now faced with an appeal from the Decision[1] dated July 1, 1997 rendered by the Regional Trial Court of Tabaco, Albay, Branch 15, which dismissed plaintiffs-appellants' complaint for Easement of Light and View, Injunction and Damages in Civil Case No. T-1575.

A factual backdrop of the present dispute is summarized by the court a quo as follows:

“This instant case arose when defendants raised the fence on the western side of the church yard of the Catholic church in Tabaco, Albay fronting the residents of plaintiffs who are allegedly owners/awardees/actual possessors of lots situated at Patio Development Project Subdivision, San Juan, Tabaco, Albay, having acquired their respective rights from Patio Pastoral Development Project Committee. The raising of this existing fence is part of the Perpetual Eucharistic Adoration Project. Additionally, defendants constructed on the wall an extension of a likewise existing ossuary.

Plaintiffs claimed that these constructions made by defendants obstruct air, light and view and cause not only inconvenience but pose health risks and anxiety and eerie feeling as it exudes cemetery-like atmosphere. Moreover, that this greatly diminished the value of the lands of the plaintiffs. That the wall and ossuary were constructed illegally as they were done without the required building permit pursuant to the National Building Code of the Philippines (P.D. No. 1096), as amended, and against zoning regulations.

Plaintiffs pray that a restraining order be issued and after due notice and hearing a writ of preliminary mandatory injunction be issued ordering defendants, their agents or representatives to demolish the raised fence and ossuary, that the gate of the PEA park be constructed at the level of the original fence, and to order defendants to pay plaintiffs P5,000.00 as litigation expenses.

On July 22, 1992, a writ of temporary restraining order was issued by the court.

On the other hand, defendants claim that plaintiffs, with the exception of Gregorio Bongao and Cristito Canillo, are not owners of the lots in San Juan, Tabaco, Albay because they came to possess the same through tolerance of the defendant church. That on the contrary, they are mere squatters in said land the fact that they failed to comply with the installment payments covering the consideration of the sale of a low cost by the defendant church in consonance with its social amelioration program. That defendant Jesus Esquela, with knowledge and consent of defendant church has caused the construction of the fence as part of the Perpetual Eucharistic Adoration Project, and the same was done openly, publicly and without malice as an attribute of ownership and the exercise of proprietary rights of the defendant church.

The Court conducted an ocular inspection and after due notice and hearing and upon the filing of supersedeas bond in the amount of P10,000.00 the motion for issuance of a writ of preliminary injunction by the plaintiffs

was granted on December 17, 1992.

On June 10, 1993, plaintiffs filed an amended complaint impleading Msgr. Jose C. Sorra as defendant in his capacity as representative of the Catholic Bishop of Legazpi Diocese.

In the course of the hearing, this case was re-raffled to this Court when on April 22, 1994, Hon. Emmanuel R. Real, newly designated presiding judge of Branch 17 and long time colleague in the prosecution service of plaintiff Luis R. Bocalbos, Jr. inhibited.

During the pre-trial on August 31, 1994, plaintiffs Gregorio Bongao, Joseph Callos, Cristito Canillo, Eutiqio Canillo, Patria Sande, Consolacion Celestial and Jesus Bonza failed to appear and were consequently declared non-suited. Meanwhile, pre-trial was reset to October 18, 1994.

Finally, the continuation of the pre-trial was held on November 22, 1994 and the parties agreed to the simplification of the issues as follows:

- a) Whether there is a violation of easement of light and view;

- b) Whether there is proper suit of abatement of nuisance; and

- c) Whether there was a diminution on the price of the land by virtue of the construction of the fence.

The following facts were mutually admitted by the parties.

- a) The identity of the parties;

- b) The plaintiffs agree during the ocular inspection that the building of the plaintiff and the wall and concrete fence of the church are separated by a road;

- c) The plaintiffs agree that the shortest distance between the concrete wall of the defendant and the wall of the house of the plaintiff is 4 meters and 75 centimeters;

- d) That at the time of the ocular inspection there were additional boxes purposely for the ossuary near the entrance of the PEA gate;

- e) That the plaintiff Fiscal Luis Bocalbos, Jr., is not the owner of the property where his house is located;

- f) That the plaintiff Fiscal Luis Bocalbos, Jr., is not an awardee of the lot situated at San Juan, Tabaco, Albay where his house is situated but his late father;

- g) That the plaintiffs admit that it was the Roman Catholic Church which awarded the lot situated at San Juan, Tabaco, Albay where the plaintiff's house is situated;

- h) That plaintiffs admit that lot 162 is declared in the name of the Roman Catholic Church by the Provincial Assessor's Office.

During the trial, the plaintiffs adopted the testimonies of all the witnesses presented during the hearing in the issuance of the writ of preliminary injunction namely: Engr. Noel Bonaobra, Engr. Romualdo Llaguno, Santos Bonagua and Fiscal Luis R. Bocalbos, Jr. as well as the documentary exhibits marked in evidence as follows: Exh. 'A' and submarkings – Development Plan of Patio Development Project at San Juan, Tabaco, Albay; Exh. 'B' – Notice of illegal construction dated June 4, 1992; Exh. 'C' and submarkings – letter complaint of Fiscal Luis Bocalbos, Jr. dated June 8, 1992; Exh. 'D' and submarking – Memorandum of the Secretary of the Dept. of Interior and Local Government to Local Chief Executives; Exh. 'E' and submarkings – sketch plan of PEA gate; Exh. 'F' (1 and 2) – Official receipts of lot payments; Exh. 'G' – Real Estate Tax payment; Exh. 'H' – letter of postponement dated June 22, 1992; Exh. 'I' letter of invitation; Exh. 'J' – letter of the Municipal Mayor of Tabaco dated July 16, 1992. Additionally, it(sic) presented as witness Mrs. Corazon Z. Bocalbos, wife of plaintiff Fiscal Luis R. Bocalbos, Jr., to substantiate its(sic) claims, and on rebuttal it(sic) presented Ms. Emy Bilan.

For the defendants, Engr. Orlando Roces, Engr. Valentin Confesor and Dr. Jesus Esquela were presented as witnesses and marked in evidence the following exhibits: Exhs. '1' to '1-m' – picture of the wall; Exh. '2' – cover letter; Exh. '3' – indorsement of the memorandum issued by Engr. Eliseo Bien and Engr. Alberto Oga, Sr.; Exh. '4' – Memorandum for the District Engr. from Engrs. Bien and Oga, Sr.; Exh. '5' – Certification issued by Valentin Confesor, Jr.; Exh. '6' – official receipt; Exh. '7' – certification issued by Ms. Diana R. Apistar, Chief, Administrative Services Division, DENR; Exh. '9' – appointment of Dr. Jesus Esquela as lay person in charge of the development and maintenance of the PEA chapel and meditation park issued by Msgr. Rolando V. Diokno dated August 1, 1991; and Exh. '10' to '10-D' – pictures of the existing ossuary and the additional compartments.”[2]

On July 1, 1997, the court a quo rendered its assailed decision, the dispositive portion of which reads:

“The factual setting of the properties concerned, their actual locations as observed by the court clearly show that the provisions of law on easement of light and view find no application in this instant case. Having no basis in law and in fact, this complaint is hereby dismissed and the preliminary injunction issued against herein defendants is hereby ordered lifted.

SO ORDERED.”[3]

Still unsatisfied, plaintiffs-appellants Fiscal Luis R. Bocalbos, Jr. and Santos Bonagua, Jr. filed the instant appeal challenging the aforementioned decision of the lower court on the following grounds:

“I

THE TRIAL COURT ERRED IN DISMISSING THE COMPLAINT: and

II

THE TRIAL COURT ERRED IN THE APPRECIATION OF FACTS AND APPLICATION OF LAWS THEREBY ORDERED THE LIFTING OF THE PRELIMINARY INJUNCTION ISSUED CONSEQUENTLY ALLOWING THE DEFENDANTS TO CONTINUE WITH THE CONSTRUCTION OF THE CEMETERY WITHOUT THE REQUIRED BUILDING PERMIT FROM THE BUILDING OFFICIAL AND THE HOUSING LAND USE AND REGULATORY BOARD.”[4]

The instant appeal is devoid of merit.

Upon a careful review of the facts of this case, We find that the following issues are needed to be resolved, to wit:

- a) Whether or not the concrete fence and the ossuary constructed by defendant-appellee church violated the easement of light and view of plaintiffs-appellants; and
- b) Whether or not the said constructions constitute nuisances.

On the matter of the easement of light and view, plaintiffs-appellants' evidence falls short of establishing their alleged right to an easement of light and view.

Aside from the absence of any contract or any other document to support their alleged right to an easement of light and view, plaintiffs-appellants failed to prove that they acquired the same through prescription as provided under Article 668 of the New Civil Code of the Philippines, to wit:

“Art. 668. The period of prescription for the acquisition of an easement of light and view shall be counted:

- (1) From the time of the opening of the window, if it is through a party wall; or
- (2) From the time of the formal prohibition upon the proprietor of the adjoining land or tenement, if the

window is through a wall on the dominant estate.”

The instant case clearly falls under subsection 2 of the foregoing provision which involves a negative easement. As ruled by the Supreme Court in the very similar case of *Cortez v. Yu-Tibo*[5], the pertinent portions of which provides:

“This suit was brought to obtain an injunction, in accordance with the provisions of sections 162 to 172 of the Code of Civil Procedure, for the purpose of restraining the continuation of certain buildings commenced by the defendant. The court below issued a preliminary injunction during the trial, but, upon rendering final judgment, dissolved the injunction, with the costs against the plaintiff. The latter excepted to this judgment and assigns error.

In the trial the following facts were admitted without contradiction:

(1) That house No. 65 Calle Rosario, this city, property of the wife of the plaintiff, has certain windows therein, through which it receives light and air, said windows opening on the adjacent house, No. 63 of the same street; (2) that these windows have been in existence since the year 1843, and (3) that the defendant, the tenant of the said house No. 63, has commenced certain work with the view to raising the roof of the house in such a manner that one-half of one of the windows in said house No. 65 has been covered, thus depriving the building of a large part of the air and light formerly received through the window. xxx

xxx

When a person opens windows in his own building does nothing more than exercise an act of ownership inherent in the right of property, which, xxx, empowers him to deal with his property as he may see fit, with no limitations other than those established by law. By reason of the fact that such an act is performed wholly on a thing which is wholly the property of the one opening the window, it does not in itself establish any easement, because the property is used by its owner in the exercise of dominion, and, not as the exercise of an easement xxx. Coexistent with this right is the right of the owner of the adjacent property to cover up such windows by building on his own land or raising a wall contiguously to the wall in which the windows are opened xxx, by virtue of the reciprocity of rights which should exist between abutting owners, and which would cease to exist if one could do what he pleased on his property and the other could not do the same on his. Hence it is that the use of the windows opened in a wall on one's own property, in the absence of some covenant or express agreement to the contrary, is regarded as an act of mere tolerance on the part of the owner of the abutting property xxx, and does not create any right to maintain the windows to the prejudice of the latter xxx. The mere toleration of such an act does not imply on the part of the abutting owner a waiver of his right to freely build upon his land as he may see fit, nor does it avail the owner of windows for the effects of possession xxx, because it is a mere possession at will. From all this it follows that the easement of light with respect to the openings made in one's own edifice does not consist precisely in the fact of opening them or using them, inasmuch as they may be covered up at any time by the owner of the abutting property, and, as Manresa says in his commentaries on the Civil Code, ‘there is true easement as long as the right to impede its use exists.’ The easement really consists in prohibiting or restraining the adjacent owner from doing anything which may tend to cut off or interrupt the light; in short, it is limited to the obligation of not impeding the light (*ne luminibus officiatur*). The latter coincides in its effects, from this point of view, with the obligation of refraining from increasing the height of a building (*altius non tollendi*), which, although it constitutes a special easement, has for its object, at times, the prevention of any interruption of the light enjoyed by the adjacent owner.

It will be readily observed that the owner of the servient estate subject to such an easement is under no obligation whatsoever to allow anything to be done on his tenement, nor to do anything there himself, but is simply restrained from doing anything thereon which may tend to cut off the light from the dominant estate, which he would undoubtedly be entitled to do were it not for the existence of the easement. xxx, it is our opinion that the easement of lights in the case of windows opened in one's own wall is of a negative character,

and, as such, can not be acquired by prescription xxx, except by counting the time of possession from the date on which the owner of the dominant estate may, by a formal act, have prohibited the owner of the servient estate from doing something which it would be lawful for him to do were it not for the easement.

xxx

As a result of the opinion above expressed, we hold:

- That the easement of light which is the object of this litigation is of a negative character, and therefore pertains to the class which can not be acquired by prescription xxx, except by counting the time of possession from the date on which the owner of the dominant estate has, in a formal manner, forbidden the owner of the servient estate to do an act which could be lawful were it not for the easement.

- That, in consequence thereof, the plaintiff, not having executed any formal act of opposition to the right of the owner of house No. 63 Calle Rosario (of which the defendant is tenant), to make therein improvements which might obstruct the light of house No. 65 of the same street, the property of the wife of the appellant, at any time prior to the complaint, as found by the court below in the judgment assigned as error, he has not acquired, nor could he acquire by prescription, such easement of light, no matter how long a time might have elapsed since the windows were opened in the wall of the said house No. 65, because the period which the law demands for such prescriptive acquisition could not have commenced to run, the act with which it must necessarily commence not having been performed.” (Underscoring supplied).

In this case, plaintiffs-appellants failed to present any evidence to establish their alleged right to the easement of light and view and neither did they establish that they have formally forbidden defendant-appellee church from constructing the said fence and ossuary within its premises upon which prescription shall commence. Suffice it to state, the instant complaint should fail for lack of basis.

Moreover, even assuming *arguendo* that plaintiffs-appellants have acquired an easement of light and view, this complaint should likewise be dismissed.

Article 673 of the New Civil Code of the Philippines provides in no uncertain terms that:

“Art. 673. Whenever by any title a right has been acquired to have direct views, balconies or belvederes overlooking an adjoining property, the owner of the servient estate cannot build therein at less than a distance of three meters to be measured in the manner provided in article 671. Any stipulation permitting distances less than those provided prescribed in article 670 is void.”

Relative thereto, Article 671 of the New Civil Code of the Philippines states:

“Art. 671. The distances referred to in the preceding article shall be measured in cases of direct views from the outer line of the wall when the openings do not project, from the outer line of the latter when they do, and in cases of oblique views from the dividing line between the two properties.”

In the instant case, it is undisputed that the distance between the subject fence and the wall of the house of plaintiff-appellant Bolcalbos, Jr. is four (4) meters and seventy-five (75) centimeters. This was agreed upon by the parties during the pre-trial stage. Moreover, during the ocular inspection of the subject premises, plaintiff-appellant Bocalbos, Jr. stated as follows:

“COURT:

All right let us go to the other side of the wall. (Now on the other side of the wall.) Would you agree of a distance Louie from the wall up to your nearest window?

FISCAL BOCALBOS:

3.50 your Honor.

COURT:

All right Mike kindly measure the distance from the wall to the nearest window of Fiscal Bocalbos.

INTERPRETER:

Its(sic) 4.70 meters your Honor.

COURT:

So you agree Louie that its 4.70 meter(sic) Fiscal?

FISCAL BOCALBOS:

Yes, I agree 4.70 meter(sic) your Honor.” [6]

Manifestly, the distance between the constructed fence of defendant-appellee church and the window of plaintiff-appellant Bocalbos, Jr. is more than a distance of 3 meters. Thus, the restriction imposed by Article 673 of the New Civil Code of the Philippines upon the owner of the servient estate, defendant-appellee church in this case, was not violated by the construction of the fence.

Anent plaintiffs-appellants contention that the subject fence and ossuary constitute nuisance per accidens since the same caused “humid atmosphere, health risk and traffic hazards, and eerie feeling”[7] and “the location of the cemetery was not in consonance with the required zoning”[8], the same is bereft of merit.

A nuisance is defined under Article 694 of the New Civil Code of the Philippines as follows:

“Art. 694. A nuisance is any act, omission, establishment, business, condition of property, or anything else which:

- (1) Injures or endangers the health and safety of others; or
- (2) Annoys or offends the senses; or
- (3) Shocks, defies or disregards decency or morality;
- (4) Obstructs or interferes with the free passage of any public highway or street, or any body of water; or
- (5) Hinders or impairs the use of property.”

Upon a careful scrutiny of the facts of the present controversy, We find that plaintiffs-appellants failed to establish their claim that the subject constructions constitute nuisances.

First, the fence constructed within the premises of the defendant-appellee church does not cause any of the instances enumerated under Article 694 of the New Civil Code of the Philippines so as to consider the same a nuisance. In fact, the bare and general speculation of plaintiff-appellant Santos Bonagua, Jr. that the said fence is a traffic hazard is clearly insufficient to prove that the same constitutes a nuisance.

Secondly, the ossuary is similarly not a nuisance. Plaintiffs-appellants’ allegations that the ossuary is a health risk is belied by the fact that the same has been in existence for more than 20 years and no evidence was shown to even prove that someone’s health has been affected by the said ossuary. There is absolutely no evidence presented how the said ossuary would produce a health risk. Moreover, the alleged foul odor coming from the said ossuary was not sufficiently established by plaintiffs-appellants’ evidence. On the contrary, as correctly observed by the lower court, before the vacant yard was totally fenced, it was a dumpsite of garbage and emitted foul

odor.[9] As testified to by defendant-appellee Jesus Esquela:

“FISCAL BOCALBOS: (To witness)

Q: Now, Dr. Esquela you assume that there is no harm of any foul odor that emanates from that place, what is the basis of your statement?

A: The foul odor emanating from that place is not coming from the usuary(sic) but on the ground specially before I prepared it because this particular space happened to be the dumping ground and even some people complained of extra curricular activities that happened there, a foul odor emanating from that place because it becomes a public toilet aside from being a dumping ground and during rainy days it retains waters and all the dirt will naturally the odor becomes foul.”[10]

It must be noted that an ossuary is the place where the skeletal remains of the dead are placed. In this case, plaintiffs-appellants clearly failed to show that the foul odor they claim to smell came from these skeletal remains.

Furthermore, the mere allegation that the ossuary produced an eerie feeling is not sufficient enough to consider the same a nuisance. The said ossuary has been in existence for more than 20 years and no complaint was ever made against it for allegedly causing an eerie feeling.

Lastly, as to the issue of the building permit, plaintiffs-appellants are not the real parties-in-interest since the same is an administrative matter involving the building officials.

Section 205 of Presidential Decree No. 1096, otherwise known as the National Building Code of the Philippines, provides:

“SECTION 205. Building Officials. — Except as otherwise provided herein, the Building Official shall be responsible for carrying out the provisions of this Code in the field as well as the enforcement of orders and decisions made pursuant thereto.

Due to the exigencies of the service, the Secretary may designate incumbent Public Works District Engineers, City Engineers and Municipal Engineers act as Building Officials in their respective areas of jurisdiction.

The designation made by the Secretary under this Section shall continue until regular positions of Building Official are provided or unless sooner terminated for causes provided by law or decree.”

In connection therewith, Sections 301 to 306 of the National Building Code relate to building permits. Necessarily, it is the function of the building official to determine any administrative sanction against violations of the provisions of the National Building Code on building permits and certainly not plaintiffs-appellants.

All said, We find no error allegedly committed by the court a quo in dismissing the instant complaint.

WHEREFORE, the Decision dated July 1, 1997 rendered by the Regional Trial Court of Tabaco, Albay, Branch 15 in Civil Case No. T-1575, is AFFIRMED.

SO ORDERED.

Guevara-Salonga, (Chairman) and Pizarro, JJ., concur.

[1] Rollo, pp. 130-136.

[2] Ibid, pp. 130-134.

[3] Ibid, p. 136.

[4] Ibid, p. 109.

[5] 2 Phil. 24 (1903), cited in “Commentaries and Jurisprudence on the Civil Code of the Philippines” Volume II, by Arturo Tolentino, 1994 Edition, pp. 404-405.

[6] TSN dated October 28, 1994, pp. 7-8.

[7] Rollo, p. 110.

[8] Ibid.

[9] Rollo, p. 134.

[10] TSN dated October 22, 1996, pp. 37-38.

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