

**GELACIA PINILI LAGRITO, LOURDES TIA, CRISTINO PINILI,  
FAUSTINO PINILI, FELIXBERTA PINILI ASUNIO, DEMETRIO SY, JR.,  
PLAINTIFFS-APPELLANTS, VS. MA. LUISA PINILI DE GUIA AND  
SPOUSE...**

Ponente: LOPEZ, J.

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**LOPEZ, J.:**

**The Case**

Before this Court is an appeal filed under Rule 41 of the 1997 Rules of Civil Procedure which seeks to reverse and set aside the Decision[1] of the Regional Trial Court, Branch 32 of Dumaguete City, dated 29 March 2010, ordering the construction of a right of way on Defendant-Appellee Emmanuel De Guia's property and directing Plaintiffs-Appellants to indemnify the former the total amount of P421,390.00, the dispositive portion of which states:

“WHEREFORE, premises considered, the Court orders that a right of way be constructed on the northern side of defendants' property described as Lot 2916-A-2-A covered by TCT No. 20850 of about 267 sq. meters and the plaintiffs are directed to indemnify Emanuel de Guia the total amount of P421,390.00.

SO ORDERED.”

**FACTUAL ANTECEDENTS**

The present case arose out of a claim for an easement of right of way by Plaintiffs-Appellants, invoking the application of Article 652 of the Civil Code, against Defendant-Appellee Emmanuel de Guia (herein referred to as “Emmanuel” for brevity).

The parcels of land owned by the parties in this case were formerly part of Lot No. 2916 of the Dumaguete Cadastre located at Barangay Batinguel, Dumaguete City. The said lot was subsequently partitioned and subdivided into 8 sub lots, Lot Nos. 2916-A to H. These sub lots were adjudicated to the parties' respective predecessors-in-interest in the following manner:

Sub Lot No. 2916-A – to Demetrio Pinili;  
Sub Lot No. 2916-B – to the heirs of Geronimo Pinili namely: Maxima, Cristino, Gerado, Flora, Conchita, Felixberta, Emelia and Faustino, all surnamed Pinili;  
Sub Lot No. 2916-C – to Deogracias Pinili;  
Sub Lot No. 2916-D – to Pastor Pinili;  
Sub Lot No. 2916-E – to Purisima Pinili;  
Sub Lot No. 2916-F – to Lucia Pinili;  
Sub Lot No. 2916-G – to Francisca Pinili; and  
Sub Lot No. 2916-H – to Jesusa Pinili.

Plaintiffs-Appellants Gelacia Pinili Lagrito, Cristino Pinili, Faustino Pinili and Felixberta Pinili Asunio, together with their other brothers and sisters, became co-owners of sub lot no. 2916-B, they being the surviving heirs of

Geronimo Pinili. Plaintiff-Appellant Lourdes Tia became the owner of sub lot no. 2916-D, she being the sole heir of Purisima Pinili y Teves, the original owner. Plaintiff-Appellant Demetrio Sy, Jr. became the owner of sub lot no. 2916-C after acquiring the same by purchase from the heirs of Deogracias Pinili, the original owners.

On the other hand, Defendant-Appellee Ma. Luisa de Guia (herein referred to as “Ma. Luisa” for brevity) inherited sub lot no. 2916-A from her father, Demetrio Pinili. She caused its subdivision into three (3) sub lots namely: 2916-A-2, 2916-A-B and 2916-A-2-A. The latter lot was mortgaged to the Rural Bank of Tanjay, Negros Oriental and was later on foreclosed and sold at public auction.

Thereafter, Defendant-Appellee Emmanuel, son of Ma. Luisa, bought sub lot no. 2916-A-2-A from the Rural Bank of Tanjay. This particular lot is now the subject matter of the claim for an easement of right of way.

On 10 November 2006, Plaintiffs-Appellants filed a Complaint[2] with the trial court for Specific Performance under Article 652 of the Civil Code, Easement of a Road Right of Way and Damages. They alleged that after the partition of Lot No. 2916, only Lot Nos. 2916-A and 2916-C have access to a public road while the inner sub lots have no access thereto except through these sub lots.[3] They added that before the partition, the original owners had an agreement to establish a common road right of way on their property and later on, a sketch plan was prepared by the owners who affixed their respective signatures thereon.[4]

That in accordance with the said agreement, the owners of the inner sub lots established an access road going to Batinguel-Camanjac road, traversing the lots of the parties herein, including the lot of Defendants-Appellees.[5] They also averred that after Emmanuel purchased the subject property from the bank, they demanded from him that the grant of the right of way be formalized and reduce into writing.[6] However, Emmanuel allegedly refused to grant their request.

Plaintiffs-Appellants insist that pursuant to the aforementioned agreement and Article 652 of the Civil Code, they are entitled to demand a right of way without indemnity.[7]

On 6 December 2006, Defendants-Appellees filed their Answer with Counterclaim[8]. They countered that Plaintiffs-Appellants’ allegation that the inner sub lots have no access to a public road is false as there is an existing right of way which is nearer, easily accessible and can be shared by the owners of sub lots 2916-H, F, D and B.[9] They added that Article 652 of the Civil Code does not apply in the present case since the said provision contemplates a situation wherein the remaining properties of the vendor, exchanger or co-owner surrounds and isolates a property previously disposed of by such vendor, exchanger or co-owner.[10] They averred that in the present case, they have no other neighboring or adjacent properties in the area unlike Plaintiffs-Appellants.[11]

Moreover, they contended that Plaintiffs-Appellants’ complaint states no cause of action since they failed to allege the essential requisites for the grant of a compulsory right of way provided under Articles 649 and 650 of the Civil Code especially the payment of proper indemnity.[12]

Thereafter, trial on the merits ensued. On 29 March 2010, the trial court rendered the assailed decision. It ruled that Plaintiffs-Appellants failed to satisfy three (3) of the four (4) essential requisites for the establishment of a compulsory easement of right of way under Articles 649 and 650 of the Civil Code, to wit: (1) Plaintiffs-Appellants’ properties are not without any point of ingress and egress since during the conduct of an ocular inspection, the trial court found out that they have an existing access to a public road although it is not wide enough to accommodate four wheeled vehicles; (2) Plaintiffs-Appellants manifested their unwillingness to pay the proper indemnity provided for by law in the event a right of way will be granted; and (3) the isolation of Plaintiffs-Appellants’ properties is partly attributable to the manner they subdivided their properties thus, leaving them with no adequate ingress or egress. According to the trial court, only the last requisite is present in the case

at bar.

Nonetheless, the trial court still ordered the establishment of a compulsory easement of right of way upon payment of the proper indemnity in the amount of P421,390.00 in accordance with the Report[13] prepared by the Commissioners appointed by it. It ruled that the Plaintiffs-Appellants' existing right of way is inadequate as it is long, circuitous and unable to accommodate four wheeled vehicles. It added that the new right of way to be established, traversing Emmanuel's lot, provides the shortest route in going to the public road and it is at the point least prejudicial to the servient estate.

The trial court also ruled that Article 652 of the Civil Code invoked by Plaintiffs-Appellants does not apply in the present case. Furthermore, Plaintiffs-Appellants failed to fully substantiate their claim that there was a voluntary easement of right of way agreed upon by the parties as the evidence do not reveal any agreement executed for such purpose, the trial court added.

Aggrieved, Plaintiffs-Appellants filed a Notice of Appeal[14] on 13 April 2010. In an Order[15] dated 14 April 2010, the trial court gave due course to the notice of appeal and the records of this case were ordered elevated to this Court.

On 15 June 2012, Plaintiffs-Appellants filed their Appellants' Brief[16] raising two (2) assignments of error, to wit:

I

THE COURT A QUO ERRED IN HOLDING THAT THE NON-INDEMNITY CLAUSE UNDER ARTICLE 652 OF THE NEW CIVIL CODE DID NOT APPLY TO A SUBSEQUENT OWNER (EMMANUEL DE GUIA) OF A PARTITIONED LAND REGISTERED UNDER THE TORRENS SYSTEM.

II

THE COURT A QUO ERRED IN HOLDING THAT EMMANUEL DE GUIA COULD CLAIM GOOD FAITH AS A VALID DEFENSE TO THE NON-INDEMNITY CLAUSE UNDER ARTICLE 652 OF THE NEW CIVIL CODE.

## RULING

We DENY the present appeal for lack of merit.

Considering that the issues are interrelated, these will be discussed jointly.

In their brief, Plaintiffs-Appellants insist that Article 652 of the Civil Code applies in this case and not Article 649 of the same code. They added that the first three requisites cited by the trial court for the grant of a legal easement of right of way cannot be applied as additional requisites under Article 652 for the following reasons: first, Article 652 merely states that a piece of land is surrounded by other estates but it does not contain the phrase "without adequate outlet to a public highway", which can be found in Article 649;[17] second, Article 652 expressly provides for a non-indemnity clause in contrast to Article 649 which provides for the payment of proper indemnity;[18] and lastly, a co-owner cannot be faulted in accepting an interior sub lot in a case of partition, otherwise, Article 652 would not have compelled the co-owner to grant a right of way without indemnity.[19]

Plaintiffs-Appellants also contended that Article 652 applies to subsequent owners of a partitioned lot and not just to the original co-owners thereof.[20] Furthermore, they argued that Emmanuel cannot claim good faith as a defense to the applicability of the non-indemnity clause under Article 652 considering that he is privy to the manner his mother, Ma. Luisa, acquired her interest over Lot No. 2916-A.

Defendants-Appellees were given a chance to file their brief but they chose not to file the same thus, this case was deemed submitted for decision sans their Appellees' Brief. Upon a careful consideration of all the evidence and

the testimonies of both parties, We are convinced that Plaintiffs-Appellants' contentions do not hold water.

Article 652 of the Civil Code does

not apply in the present case. Article 652 of the Civil Code provides:

“Whenever a piece of land acquired by sale, exchange or partition, is surrounded by other estates of the vendor, exchanger, or co-owner, he shall be obliged to grant a right of way without indemnity.

In case of a simple donation, the donor shall be indemnified by the donee for the establishment of a right of way.”

One of the situations contemplated by the aforementioned provision is when a piece of land acquired by partition is surrounded by other estates of the co-owner, the latter is bound to grant a right of way without indemnity. The reason for this provision is that the servitude without indemnity is considered as a tacit condition of the partition, where each party receives something, because the fact that the tenement of the grantee has been surrounded by those of others depended on the will of the parties.[21]

The said provision presupposes that the grantee and the grantor must be co-owners of the property for the non-indemnity clause to apply. In the case at bar, it is evident that Plaintiffs-Appellants and Defendant-Appellee Emmanuel are not co-owners considering that there was already a partition of the mother lot, Lot No. 2916. Moreover, Lot No. 2916-A-2-A, the servient estate, was mortgaged by Ma. Luisa to the Rural Bank of Tanjay and eventually, was foreclosed and sold to the bank. Later on, Emmanuel acquired the subject property from the Rural Bank of Tanjay not by virtue of redemption but by purchase. Clearly then, Plaintiffs-Appellants and Defendant-Appellee Emmanuel did not become co-owners at any given time.

Considering the foregoing, this Court is of the opinion that the non-indemnity clause under Article 652 finds no application in the present case. As discussed above, the reason for the aforementioned provision is that it is an implied condition of the partition since the fact that the grantee's lot has been surrounded by other estates depended on the will of the parties. In the present case, however, it cannot be said that when Defendant-Appellee Emmanuel purchased the subject lot from the Rural Bank of Tanjay, it carried an implied condition that he would grant a right of way without indemnity to the Plaintiffs-Appellants.

Furthermore, they also argued that Article 652 is applicable to a subsequent owner of a partitioned property like Defendant-Appellee Emmanuel. To justify their argument, Plaintiffs-Appellants cited the case of *Dioso vs. Cardeño*[22]. We are not persuaded. The case invoked by them finds no application in the case at bar. The aforesaid case involves a property which was partitioned by the heirs of the original owner. Leonora Cardeño, one of the heirs, acquired the portion abutting the public road while Encarnacion Javel, her co-heir, acquired the inner portion. Later on, the latter sold her share to Felicidad Legaspi who, in turn, sold the same property to the Spouses Dioso. The spouses now claimed an easement of right of way over the property of Leonora Cardeño, which the latter denied.

The Supreme Court held that Encarnacion's successors-in-interest, Spouses Dioso, are entitled to demand an easement of right of way not because of Article 652 of the Civil Code but because of the agreement previously entered into between Leonora and Encarnacion, the original owners of the property, regarding the establishment of a voluntary easement of right of way which was embodied in a document titled “Pinanumpaang Salaysay”. Evidently, the said case is not in all fours with the present case as the parties herein did not execute any written agreement establishing an easement of right of way.

If We follow Plaintiffs-Appellants' argument that Article 652 is applicable to a subsequent owner of a partitioned property, like Defendant-Appellee Emmanuel, We would be stretching the law too far which this Court will not

countenance.

The existence of a Voluntary Easement was not established by Plaintiffs-Appellants.

Plaintiffs-Appellants would also want to impress upon this Court that aside from their claim of legal easement of right of way under Article 652 of the Civil Code, there exists as well a voluntary easement of right of way by agreement of the original co-owners of Lot No. 2916. A voluntary easement of right of way is one constituted by a contract or agreement and does not require that the dominant estate be isolated and without adequate access to a public highway. Plaintiffs-Appellants attempted to present a document purportedly containing the agreement of the original co-owners with respect to the establishment of a right of way. However, the aforesaid document appears suspect since not all of the original co-owners signed the document and it was not even notarized thus, it remains a private document and the presumption of regularity does not apply.

Even granting for the sake of argument that there is such an agreement, nonetheless, it does not bind Defendant-Appellee Emmanuel. An easement is considered as a real right, any agreement creating it should be drawn and executed with the same formalities as a deed to a real estate and ordinarily, must be in writing.[23] The Civil Code provides that “acts and contracts which have for their object the creation, transmission, modification or extinguishment of real rights over immovable property must appear in a public document”.[24] Although non compliance with the said provision does not affect the validity of a contract, still, it is necessary in order to bind third persons. In addition, a document stipulating a voluntary easement must be recorded in the Registry of Property in order not to prejudice third parties.[25] In the present case, the alleged agreement was not recorded in the registry of property and was not even annotated on the title of Lot No. 2916-A. Consequently, Emmanuel is not bound by any terms of the alleged agreement between Plaintiffs-Appellants and Defendant-Appellee Ma. Luisa since he is not in any way privy to the said agreement.

Moreover, at the time Defendant-Appellee Ma. Luisa signed the alleged agreement in 2001, she is no longer the owner of the subject lot as it was already foreclosed and sold to the Rural Bank of Tanjay way back in the year 1983. Subsequently, Emmanuel bought the subject property from the Rural Bank of Tanjay in the year 1990. Hence, Ma. Luisa’s alleged conformity to the said agreement, as relied upon by Plaintiffs-Appellants, does not in any way prejudice the rights of the subsequent owner, Emmanuel.

As the trial court correctly observed, the pieces of evidence presented by Plaintiffs-Appellants do not reveal any agreement executed by the parties pertaining to the claimed right of way. Thus, the allegation that there was a written agreement on the establishment of a right of way has no basis.

Article 649 and 650 of the Civil Code applies in the present case.

Considering that Article 652 of the Civil Code does not apply in the present case, the trial court correctly applied Articles 649 and 650 of the same code.

If a dominant estate is isolated and without adequate access to a public highway, the grant of an easement of right of way is compulsory subject to the payment of proper indemnity. The conferment of a compulsory right of way is governed by Articles 649 and 650 of the New Civil Code, to wit:

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.

The following requisites should be met to be entitled to an easement of right of way:

1. The dominant estate is surrounded by other immovables and has no adequate outlet to a public highway;
2. There is payment of proper indemnity;
3. The isolation is not due to the acts of the proprietor of the dominant estate; and
4. 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.[26]

At the outset, the records reveal that there is an existing road right of way located adjacent to the property of Defendant-Appellee Emmanuel which Plaintiffs-Appellants have been using as their ingress and egress. Plaintiffs-Appellants now seek that this existing right of way be extended so that it can accommodate four wheeled vehicles. However, they are not willing to pay the proper indemnity because of Article 652 of the Civil Code which We have declared to be inapplicable in the present case.

To be entitled to an easement of right of way, the four (4) requisites enumerated above should be satisfied. The burden of proving the existence of these prerequisites lies on the owner of the dominant estate.[27] We conclude that only three (3) of the four (4) requisites have been complied with by Plaintiffs-Appellants. First, although there is an existing road right of way, such access is nonetheless, inadequate for the needs of the dominant estate. As the Supreme Court held in the case of *Spouses Sta. Maria vs. Court of Appeals and Spouses Fajardo*[28], “a person need not content himself, like his neighbors, with a pathway and deny himself the use of an automobile. In the present case when motor vehicles are a vital necessity, a dominant proprietor has a right to demand a driveway for his automobile and not a mere pathway for persons.” Since Plaintiffs-Appellants would want to utilize the right of way as ingress and egress of their motor vehicles, then they can demand an extension of the existing right of way.

Second, the isolation of their properties cannot be attributed to their own acts. Plaintiffs-Appellants merely inherited their properties from their predecessors-in-interest. Third, the easement traversing the lot of Defendant-Appellee Emmanuel provides the shortest distance in going to the public road and no significant structures would be affected thereby.

With regard to the second requisite, the law requires that there must be payment of the proper indemnity. This requisite is not present here precisely because Plaintiffs-Appellants' argument is predicated on the non-indemnity clause provided under Article 652 of the Civil Code. However, as We have ruled above, Article 652 finds no application in the case at bar. Thus, Plaintiffs-Appellants are liable for the payment of the proper indemnity for the grant of a compulsory easement of right of way.

Strict compliance with these standards is required. As held by the Supreme Court in the case of *Pacita*

David-Chan vs. CA and Phil. Rabbit Bus Lines, Inc.[29]:

“There are rigorous standards to be complied with by owners of the dominant estate before they may be granted with an easement of right of way. These standards must be strictly complied with because easement is a burden on the property of another. Before such inconvenience may be imposed by the Court, applicants must prove that they deserve judicial intervention on the basis of law...xxx xxx.”

It may not be amiss to add that when the trial court tried to fix the indemnity to be paid by the Plaintiffs-Appellants for the grant of an easement of right of way, it based the amount of the indemnity only on the market value of the land to be occupied. This, however, is not correct. The second paragraph of Article 649 of the Civil Code provides:

“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.” (Emphasis supplied.)

Since the intention of Plaintiffs-Appellants is to establish a permanent passage, then the value of the indemnity should include not only the value of the land occupied but also the amount of damage caused to the servient estate. Settled is the rule in statutory construction that “when the law is clear, the function of the courts is simple application.”[30] Thus, the trial court should have included the amount of damage caused to the servient estate in fixing the amount of indemnity to be paid to its owner, Emmanuel.

Finally, it is noteworthy that the owner of the servient estate, Emmanuel, did not question the decision of the trial court establishing an easement of right of way on his property. Hence, it is safe to conclude that he is amenable to the establishment of the said easement. In fact, during his direct examination, Emmanuel expressed his willingness to grant Plaintiffs-Appellants a compulsory easement of right of way conditioned on the latter’s payment of the proper indemnity.[31]

All the foregoing premises considered, this Court finds that there is no more need to resolve the other issue advanced by the Plaintiffs-Appellants.

WHEREFORE, premises considered, the instant appeal is DENIED. The Decision of the Regional Trial Court, Branch 32 of Dumaguete City dated 29 March 2010 in Civil Case No. 2006-14027 is AFFIRMED with a MODIFICATION that the award of indemnity should include the amount of the damage caused to the servient estate. The case is hereby remanded to the trial court for the determination of the amount of damage caused to the servient estate by reason of the grant of the easement of right of way.

**SO ORDERED.**

Ingles, G.T., Chairperson., and Lagura-Yap, M.B., JJ., concur.

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[1] Records, pp. 435-448.

[2] Records, pp. 2-9.

[3] Plaintiffs-Appellants’ Complaint, p. 4; Records, p. 5.

[4] Ibid.

[5] Ibid., p. 5; Records, p. 6.

[6] Ibid.

- [7] Ibid., p. 6; Records, p. 7.
- [8] Records, pp. 20-27.
- [9] Defendants-Appellees' Answer, p. 2; Records, p. 21.
- [10] Ibid., p. 4; Records, p. 23.
- [11] Ibid.
- [12] Ibid.
- [13] Records, pp. 358-369.
- [14] Ibid., p. 466.
- [15] Rollo, p. 8.
- [16] Ibid., pp. 89-116.
- [17] Appellants' Brief, p. 10; Rollo, p. 96.
- [18] Ibid., p. 11; Records, p. 97.
- [19] Ibid.
- [20] Ibid.
- [21] Tolentino, Civil Code of the Philippines, Volume II, p. 391 citing 2 Castan 275.
- [22] G.R. No. 150155, September 1, 2004.
- [23] Obra vs. Spouses Badua, et. al., G.R. No. 149125, August 9, 2007 citing 25 Am. Jur. 2d §20, pp. 431-432.
- [24] Paragraph 1, Article 1358, Civil Code.
- [25] Spouses Valdez vs. Spouses Tabisula, G.R. No. 175510, July 28, 2008.
- [26] Crispin Dichoso Jr., Evelyn Dichoso Valdez, and Rosemarie Dichoso Pe Benito vs. Patrocinio L. Marcos, G.R. No. 180282, April 11, 2011; Quintanilla vs. Abangan, G.R. No. 160613, February 12, 2008, 544 SCRA 494, 499; Cristobal vs. Court of Appeals, G.R. No. 125339, June 22, 1998.
- [27] Cristobal et., al. vs. Court of Appeals, et. al., G.R. No. 125339, June 22, 1998.
- [28] G.R. No. 127549, January 28, 1998 citing Larracas vs. Del Rio, 37 Official Gazette 287.
- [29] G.R. No. 105294, February 26, 1997.
- [30] Woodridge School, Inc. vs. ARB Construction, Co. Inc., G.R. No. G.R. No. 157285, February 16, 2007.
- [31] TSN dated May 27, 2009, p. 9.

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