

[J]MARY CLAIRE BUKUHAN, REPRESENTED BY HER ATTORNEY-IN-FACT, ROSARIO BUKUHAN OR RICHARD BUKUHAN, PLAINTIFF-APPELLANT, VS. SPOUSES CONRADO BAUTISTA, AND ELIZABETH BAUTISTA DEFENDA...

Ponente: REYES-CARPIO, A., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/7198c65f91cc/>

REYES-CARPIO, A., J.:

Before Us is an appeal under Rule 41 of the Revised Rules of Court, filed by Mary Clare Bukuhan, represented by her attorney-in-fact, Richard Bukuhan, which seeks to reverse and set aside the September 18, 2013 Decision[1] of the Regional Trial Court, Branch 270 of Valenzuela City, and its November 19, 2013 Order[2] denying her Motion for Reconsideration, the respective dispositive portions of which read:

“WHEREFORE, the instant action for the grant of right of way with prayer for injunctive relief to be made permanent is hereby DENIED.

SO ORDERED.”

*** **

“WHEREFORE, premises considered, the Motion for Reconsideration filed by the plaintiffs (sic) is hereby DENIED for lack of merit.

SO ORDERED.”

THE ANTECEDENTS

The trial court synthesized the facts of this case in this wise:

"This dispute involves two adjoining parcels of land. One belongs to plaintiff Mary Clare Bukuhan, represented by her Attorney-in-Fact Richard Bukuhan. The other belongs to Sps. Conrado and Elizabeth Bautista.

As culled from the records, plaintiff is the registered owner of a parcel of land covered by TCT No. V-44264. Plaintiff's aforesaid lot is situated in a compound owned by the Bautista Family. The said compound, as can be gleaned in TCT No. 16275 was subdivided into three (3) lots and subsequently titled to Maxima Bautista, Susana Bautista and Alfredo Bautista. Plaintiff acquired the said property from Maxima Bautista who is the first cousin of Conrado Bautista, in 1996.

Meanwhile, adjacent to plaintiff's property is the property of defendants-spouses Conrado and Elizabeth Bautista. The aforesaid defendants are the owner thereof since March 1969 as evidenced by TCT No. 108509(7431). Defendants' property is separate from the property of Maxima Bautista from whom the plaintiff had acquired her property.

Since plaintiff's acquisition of the property in 1996, the ingress and egress to the existing Pasong Balite Road is through an alley owned by the herein-defendants, with a previous width of two (2) meters, now only one and a

half meters. Plaintiff maintains that defendants have been threatening to close the subject alley. Such would block her access to the nearest public road.

The issue went to the Office of the City Engineer of Valenzuela. In a dialogue held before the said office, the herein defendants gave plaintiff a period of three (3) months to look for alternative outlet to public road. Before the expiration of said period, plaintiff caused the filing of the instant action for Temporary Restraining Order/Preliminary Injunction to restrain defendant from closing the existing right of way. Hence, the instant case was instituted.

Summons was issued to herein defendant and the case was set for hearing on July 12, 2010. On said date, parties were given time to submit their respective position papers. On July 19, 2010, the court issued a Temporary Restraining Order enjoining herein defendants from causing the closure of the subject alley effective for a period of twenty (20) days or until August 10, 2010. On the same date, the court directed the OIC Branch Clerk and the Branch Sheriff to conduct ocular inspection on the subject properties wherein a joint report was submitted in compliance thereto.

On August 10, 2010, the court issued an Order allowing plaintiff to file a bond in the amount of P50,000.00. A writ of preliminary injunction was likewise issued pending the hearing on the merits of the instant case.

Pre-trial conference was held on December 6, 2010. The following stipulations were entered into, to wit:

- That the plaintiff is the registered owner of a parcel of land located at Pasong Balite, Marulas, Valenzuela covered by TCT NO. V- 44264;
- That the defendants are the owner[s] of a property covered by TCT No. 108509 (7431) located at Pasong Balite, Marulas, Valenzuela adjacent to the property in question, fronting Pasong Balite;
- The plaintiff's property is located as stated in the technical description at Barrio Pugad Baboy, Municipality of Valenzuela, Province of Bulacan;
- That No. 48 Road 5, San Miguel Heights, Marulas, Valenzuela is the forwarding address of the plaintiff, the registered owner of TCT NO. V-44264;
- The subject alley is existing prior to acquisition by the plaintiff in 1996 of her property covered by TCT No. V-44264;
- The subject existing alley is used as ingress and egress for the purpose and use of the plaintiffs (sic);
- That plaintiff acquired the property from a certain Maxima Bautista and not from Defendants;
- That the family of the Attorney-in-Fact has a machine shop located in front of the property in question;
- That the mother of the plaintiff own (sic) the property in front of the property of the plaintiff which is used as a machine shop and has a gate fronting Road 5, Marulas, Valenzuela City.

However, the court noted the Comments to Pre-Trial Order filed by defendants, thru counsel, denying Item No. 1 and No. 6 of the Stipulations/Admission.

Thereafter, trial on the merits ensued.

PLAINTIFF'S EVIDENCE

In support of the herein complaint, the plaintiff presented the following witnesses:

RICHARD BUKUHAN, brother and representative of Mary Clare Bukuhan testified that his sister Mary Clare acquired in 1996 from Maxima Bautista a property covered by TCT No. V-4464 (sic) located in Pasong Balite,

Brgy. Marulas, Valenzuela City. His testimony substantiated the allegations in the instant complaint.

On cross-examination, he testified that his sister Mary Clare has been living in the United States for about nine (9) years now. Her (sic) sister brought the property from Maxima Bautista, a relative of defendant Conrado Bautista.

He admitted that he has a machine shop located in his garage and that it operates from Monday to Saturday from 8:00 to 5:00 p.m. He identified, through a photograph shown to him, his garage where machines were located and from where one can see the property of his sister. He likewise identified the back door of the machine shop which can be opened or closed. He admits that his property is fronting Road 5, a public road. However, he asserted that his sister's tenants never used, not even once, the said opening in going to Road 5.

HILARIO PAYAWAL told the court that he is a resident of Pasong Balite, Marulas, Valenzuela City. He knew the defendants Conrado and Elizabeth Bautista who stood as principal sponsor during his wedding. His residence is near defendants' place. Thus, he and the defendants have been neighbors for thirty (30) years. He knows very well the alley, subject alley of this case. He is using the same since he started living there. He also knows Rosario Bukuhan, who is also one of the sponsors in his wedding. He asserts that there is a machine shop owned by Rosario Bukuhan but he had never used the same as passage way because it is a private property and is not open to the public. However, he affirmed that there was a time that he was able to use the machine shop as passage way in going out to a public road. But he was quick to explain that it only happened once. At the time it was raining, it was a Sunday and there was no work. One of the workers opened the gate by chance. Thus, he was able to pass through it in going out to a public road.

SUSANA BAUTISTA ENRIQUEZ, in open court affirmed and confirmed the contents of her Judicial Affidavit and that she owns a parcel of lot located at Pasong Balite, Valenzuela City under TCT No. T-112183.

On cross-examination, she testified that she actually resides at No. 61 R. Valenzuela Street, Marulas Valenzuela City which is just a walking distance from Pasong Balite Street. The adjoining properties next to her property are those owned by her cousin Conrado Bautista and sister Maxima Bautista. The alley, subject of this case, has been in existence since she was sixteen (16) years old and adjoined by the houses of Rosie Bukuhan, Marcelo Bautista, Alfredo Bautista, her brothers' and hers. The alley already existed when the property was still an open space in 1970. When confronted if she had proof that the alley exists (sic) in 1970, she answered that she had none. Likewise, in the titles of the properties adjoining the alley, there was no mention of its existence. She testified further that defendant Conrado Bautista inherited his property from his father Escolastico Bautista while she inherited hers from her father. While on the other hand, plaintiff Mary Clare Bukuhan acquired the property from her family. Although not the present occupant of her property, the existence of the alley benefits her as her property still uses the alley and she wants it to remain for her child's sake.

DEFENDANTS' EVIDENCE

RICHARD BAUTISTA, executed a Judicial Affidavit, the contents of which was (sic) affirmed and confirmed and was adopted to form part of his direct testimony. He took pictures of the property owned by plaintiff Mary Claire (sic) Bukuhan and the alley leading to Road 5. In the picture marked as Exhibit "1-B" which he identified in open court, it depicts an entrance of the property owned by Richard Bukuhan. The picture marked as Exh. "1-C" shows the main road on Road 5. The pictures marked as Exh. "1-D" and "1-E" shows that Road 5 and Pasong Balite were just near each other and that it would not be burdensome to the tenants to exit at Road 5. The property of plaintiff Mary Clare Bukuhan is located at the interior portion of the Pasong Balite. If the tenants of the plaintiff were to use the opening on the property of Richard Bukuhan, it would take between 10 or 5 steps to Road 5 while if they will use the alley subject of this case, it will take about 15 steps to Pasong Balite.

On cross, the same witness testified that he is aware that the property of plaintiff Mary Claire (sic) Bukuhan was bought from his aunt Maxima Bautista. The property of Richard Bukuhan is an open space. Although there is a structure erected therein gated in front and at the back. Since 1966 up to the present, his father enclosed their property with a perimeter fence. But never close, encroach nor fence the pathwalk, the subject alley of this case.

On re-direct examination, the same witness testified that Richard Bukuhan and plaintiff Mary Claire (sic) Bukuhan were siblings. With Mary Claire (sic) Bukuhan presently out of the country, it is Richard Bukuhan who is taking care of the property of his sister.

CONRADO BAUTISTA, executed a Judicial Affidavit which was adopted as part of his direct testimony. He substantially testified that he owns a parcel of land consisting of about 300 square meters, more or less, and registered under TCT No. T-108509. He then brought a copy of the location plan of his property under Psd-99983.

As far as he knows, it was Richard Bukuhan who owns the apartment units located at No. 48 Road 5, San Miguel Heights. He presented rental receipts from the apartment units to show proof that it is Richard Bukuhan who is collecting the monthly rental. He likewise pointed out in the sketch the alley which opened up to the road. The alley was open to the public. He identified the pictures taken by Richard Bautista and attached to his Judicial Affidavit which shows some people standing by and loitering in the place.

On cross-examination, he stated that he acquired the property in 1969 and since that time he had not occupied nor closed the alley even when he erected their conjugal house and the perimeter fence. The pictures attached to the Judicial Affidavit depicts a man who was urinating in the alley and some people playing cara y cruz, who would often times ran (sic) towards the house of Richard Bukuhan.

On re-direct, he said that Mary Claire (sic) Bukuhan bought the property from Maxima Baustista sometime in 1996. He describes the factory in the garage to be only an expansion as the other machineries were located and kept below the house but both the steel gate in front and at the back were always open to the public every day. The machines were actually located inside the house of Mr. Bukuhan and the tenants residing in the interior of the property used that passageway in going in and out of their houses to the public road.

On re-cross, he clarified that during the ocular inspection, he was present together with his wife and son, and they all saw equipments (sic), machines and other paraphernalia and an employee at work. The expansion is what is seen in the picture and that there was a passage way before the extension was made. He could not recall when the steel gate was put-up by the (sic) Bukuhan.

He also stated that since 1969, the alley already exists. It was out of "pakikisama" that he allowed the people to use the passage way in fetching water until the Bukuhan family came in.

JOSEPHINE BORGUETA, affirmed and confirmed all the contents of the Judicial Affidavit she executed, which was adopted as part of her direct testimony and testified that the opening in front of the property of Richard Bukuhan fronting Road 5 since 1986 (sic).

On cross-examination, the same witness testified that she was a bonafide resident of No. 2 Pasong Balite St., Marulas, Valenzuela City since 1986. Her lessor was Teresa Narvaez Salazar but the house was owned by a certain dela Cruz. At present however, she already moved and transferred to another place. She testified that every time the tenants of the Bukuhan ask for her service, she uses the place of Richard Bukuhan as her ingress and egress to Pasong Balite. However, she would ask permission from Bukuhan to pass thru the latter's property. Whenever she was being called by Rochelle, wife of one of the tenants, she would pass thru the Bukuhan's property because according to her it is more accessible. The passageway was open, although the gate was put up

only sometime in 1996. She had known Rochelle since 1999 and they have been passing that passageway since. However, she does not know when the gate was constructed.

On re-direct examination, she confirmed that she had been using the Bukuhan property since 1996 in going to the inner Road 5 and would pass through only if somebody would call her.

On re-cross examination, she told the court that aside from Rochelle, other tenant named Andres calls for her service. She also asserted that anyone can pass thru the gated factory of the Bukuhan (sic) and they would just go straight ahead and pass through even if there is no one around because the gate was opened wide.

REBUTTAL EVIDENCE FOR THE PLAINTIFF

Richard Bukuhan claimed in open court that the true owner of the factory is his mother, Rosario Bukuhan. The factory operates from 8:00 a.m. to 5:00 p.m. from Monday to Saturday except when there is overtime work to do. Thus, it cannot be used as a passage way for everybody because it was a close gated factory as somebody might chance an accident (sic) by passing thru it. Likewise, the public is not allowed to pass thru the gated property because there are things and materials such as steel bars in the place which might be lost. The property of his sister Mary Clare Bukuhan was brought from Maxima Bautista, who was the first cousin of Conrado Bautista. The respective properties of Maxima Bautista and Conrado Bautista were inherited from their grandparents Demetia Cruz and Pedro Bautista. Based on his research on the history of the property of Demetia Cruz and Pedro Bautista, he learned that the property was divided into three (3) lots and the property of Maxima Bautista, inherited from her father, was sold to his sister Mary Clare Bukuhan,

He further told the court that at first Conrado Bautista wanted to close the alley adjoining the property of the defendants and the property of Mary Claire (sic) Bukuhan and going to the interior portion going to the property of Susan and Fred Bautista. Said alley was an extension of the pathway, subject matter of this case. Conrado Bautista was not able to close the second alley because, when Conrado Bautista secured the services of a Geodetic Engineer, he was informed that the second alley does not form part of his property but the alley, subject matter of this case, forms part of his (Conrado) property. Upon learning that it was the first alley that is part of his (Conrado's) property, Conrado decided to have the said pathway closed.

He also told the court that he and Conrado Bautista had an altercation sometime in February 25, 2010 because the latter wanted to close the passage way. He showed photographs depicting the second alley Conrado wanted to close.

He also showed a Certification coming from the owner of the address No. 2 Pasong Balite St., Marulas, Valenzuela City, Lourdes Salazar stating that defendants' witness, Josephine Borguetta (sic) never lived nor rented any of their apartment units. The testimony of Josephine Borguetta that she and the tenants of Mary Clare Bukuhan had been using his property as their passage way is not true because the apartment of Mary Clair (sic) Bukuhan was built only in 2003 and it was only in 2004 that the said apartment had been offered for rent. The metal fabricator was (sic) started operating sometime in 1990. He further testified that he knew all the persons who are renting at the apartment of Mary Clare because he is the administrator of the care taker and he collects the rental. As an Administrator he never knew any Rochelle renting one of the apartment units of his sister Mary Clare.

On cross-examination he said that the addresses of the apartment units are at No. 48 Road 5 San Miguel Heights and the Road 5 is the road in front of the gate of the fabrication shop. He admitted that Lourdes N. Salazar is not the owner of the property in No. 2 Pasong Balite St., Marulas, Valenzuela City as it was owned by one Teresa N. Salazar. He testified that he does not know any Milagros Adriano but he knew a person named Rochelle, who

became the wife of her (sic) former employee named Romy Tejavilla. When the machine shop was open, the employees can pass thru the property.

On re-direct, he again testified that Mary Clare Bukuhan bought her property from Maxima Bautista who has a separate property from that of Conrado Bautista. His sister owns only the apartment in the property bought from Maxima Bautista. He also testified that Lourdes Salazar is the daughter of the owner of the property located at No. 2 Pasong Balite Street, Marulas, Valenzuela City and that it was Lourdes Salazar who issued the Certification because Teresa Bautista is in the United States of America.

DEFENDANT'S SUR-REBUTTAL EVIDENCE

RANDEL BAUTISTA told the court that he is the son of the defendants Conrado and Elizabeth Bautista and that he knew the defendants (sic) Mary Clare Bukuhan and Richard Bukuhan to be siblings. and they are his neighbors. He lives with his parents at No. 1 Pasong Balite, Marulas, Valenzuela City while the property of Mary Clare Bukuhan, wherein there is a 4 door apartment units (sic), is located at No. 48 Road 5, San Miguel Heights, Marulas, Valenzuela City (Exh. "T" for plaintiffs and Exh. "9" for the defendants) as evidenced by the location plan. He identified the photograph in Exh. "P" that it was Richard Bukuhan who closed the alley and not his father. he was not able to take pictures when the gate was still in place but the picture he presented in court shows that there were marks proving that there was a gate previously erected therein. He also testified that it is not true that his father cut the mango tree because it was Richard Bukuhan who had the said tree cut. What Richard Bukuhan testified that there was no Josie Borgueta who lives in No. 2 Pasong Balite St., Marulas, Valenzuela City it (sic) not true because Lourdes Salazar, who issued the Certification, is not the true owner of the property. He knew that Teresa Salazar and Josie Borgeuta (sic) reside at No. 2 Pasong Balite St., Marulas, Valenzuela City. To show proof of the persons residing at the said address, he presented MERALCO and Maynilad receipts under the name Lourdes Bago, Romeo Padrinao, Virgilio Frisa and Isaac Asuncion.

On cross-examination, he said that the property owned by Mary Clare Bukuhan is adjacent to their property. He could no longer remember when the gate existed. He and his family were not able to report to the authorities the putting up of the gate and the dismantling of the same. He also do (sic) not know whether steel pipes were used as a clothes line. He was present when Josephine Borgueta testified but he did not hear when Josephine Borgueta changed her address.

On re-direct the same witness clarified that the Certification was issued by Lourdes Salazar. His parents' address is at No. 1 Pasong Balite while the property of Mary Clare Bukuhan uses the address of No. 48 Road 5, San Miguel Heights. He also stated that Road 5 is another public road different from Pasong Balite Street. The houses of Richard Bukuhan and Mary Clare Bukuhan are situated in one road and both are fronting Road 5 while their house is fronting Pasong Balite."^[3]

On September 18, 2013, the trial court rendered a Decision in favor of the defendants-appellees spouses Conrado and Elizabeth Bautista.^[4] In its Decision, the trial court ratiocinated, to wit:

1. The contention of plaintiff-appellant Mary Clare Bukuhan, as represented by her brother Richard Bukuhan,^[5] that she has acquired an easement of right of way by reason of prescription, is erroneous. Citing the case of Bicol Agro-Industrial Producers Cooperative Inc., vs. Perfecto Obias, et al.^[6] and Art. 622 of the New Civil Code, an easement of right of way, being a discontinuous easement, may only be acquired by virtue of a title;
2. Since Mary Clare did not acquire the property from the spouses Bautista, the latter are not duty-bound to grant her right of way under Art. 652 of the New Civil Code; and

3. Mary Clare is not entitled to a legal easement of right of way under Art. 613 of the New Civil Code considering that there is an alternative adequate outlet to a public highway (Road 5) through the

adjacent property owned by her mother and brother Richard.

Mary Clare thereafter filed a Motion for Reconsideration[7] which drew an Opposition[8] from the spouses Bautista. Thereafter, the trial court issued an Order[9] dated November 19, 2013 denying the motion. Accordingly, Mary Clare filed a Notice of Appeal[10] on November 25, 2013.

Hence, this appeal with the following assignment of errors:

THE LOWER COURT ERRED IN RULING THAT PLAINTIFF-APPELLANT HAS AN ADEQUATE ALTERNATIVE INLET AND OUTLET TO THE MAIN ROAD OTHER THAN THE ALLEY OWNED BY THE DEFENDANTS-APPELLEES; and

THE LOWER COURT ERRED IN HOLDING THAT THE PROPERTY OWNED BY THE MOTHER OF THE PLAINTIFF-APPELLANT WHERE A FACTORY STANDS AND BEING MANAGED BY THE ATTORNEY-IN-FACT OF THE PLAINTIFF-APPELLANT IS AN ALTERNATIVE OUTLET THAT IS AVAILABLE FOR THE USE OF THE PLAINTIFF-APPELLANT IN GOING IN AND OUT OF THE NEAREST ROAD.

Mary Clare asserts that aside from the alley in question, she and her tenants have no other outlet to and from Pasong Balite Road. The alternative passageway referred to in the assailed Decision pertains to her brother Richard's private property which is a fully enclosed and gated factory (MJC Trading Factory). Unlike the subject passage way which has been available to the public for the past 44 years, her brother's lot has never been opened to the public as only those employed and connected with MJC Trading Factory can have access to the said lot to Pasong Balite without having to use the subject alley. The rest, such as Mary Clare's tenants, have only the subject alley available to them in going to and from Pasong Balite Road.

Mary Clare also points out that the trial court made a baseless assumption that just because she is related to the owner of the factory, the gates of the same will always be open to her tenants. It is then submitted that the trial court's pronouncement that there is an alternative adequate road to the nearest public highway is clearly erroneous.

We now resolve.

Easement has been defined as an encumbrance imposed upon an immovable for the benefit of another immovable belonging to a different owner. The immovable in favor of which the easement is established is called the dominant estate; that which is subject thereto, the servient estate.[11] Article 619 of the Civil Code further provides that "[E]asements are established either by law or by the will of the owners. The former are called legal and the latter voluntary easements."

As correctly pointed out by the trial court, the establishment of a voluntary easement in the instant case was already ruled out given the absence of any agreement granting or creating a right of way in favor of the other. Accordingly, what is left for consideration is the issue of whether or not Mary Clare is entitled to a legal or compulsory easement of right of way.

In the case of Dichoso, Jr. vs. Marcos,[12] the Supreme Court explained the basis and requirements before one is conferred with a legal or compulsory easement of right of way, to wit:

"The conferment of a legal easement of right of way is governed by Articles 649 and 650 of the Civil Code, quoted below for easy reference:

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.

xxx xxx xxx

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. xxx"

Relatedly, the entitlement to a compulsory easement of right of way is essentially a factual matter, thus, the determination of the same is best left to the trial court. "Conclusions and findings of fact by the trial court are entitled to great weight on appeal and should not be disturbed unless for strong and cogent reasons because the trial court is in a better position to examine real evidence, as well as to observe the demeanor of the witnesses while testifying in the case." [13]

After a close scrutiny of the records and applying the foregoing jurisprudential tenets in the instant case, We affirm the trial court's finding that Mary Clare, the owner of the dominant estate, failed to discharge the burden of proving the existence and concurrence of all the requisites in order to validly claim a compulsory right of way against the spouses Bautista.

While it is true that the owner of a private property which has no access to a public road has a right of easement of a right of way over adjacent servient estates, [14] said owner is not at liberty to choose whichever path is more convenient to him. To justify the imposition of this servitude, there must be a real, not a fictitious or artificial, necessity for it. Mere convenience for the dominant estate is not enough to serve as its basis. [15] To be sure, the true standard for the grant of the legal right is "adequacy." [16]

On this note, the trial court correctly ruled that Mary Clare failed to show the existence of the first requisite, i.e., no adequate outlet to a public highway. As succinctly discussed by the trial court in the assailed Decision, viz:

"On the first requisite, plaintiff contends that the closure of the existing road right of way or alley would definitely work injustice to her and her occupants since its closure would shut out plaintiff's (sic) from the nearest public highway. However, in the instant case, plaintiff miserably failed to prove the non-existence of an adequate outlet to public road.

It is undisputed that the alley subject matter of this case is owned by the defendants and that alley is located at Pasong Balite Street while the four-door apartment unit of the plaintiff bears the address of No. 48 Road 5, San Miguel Heights, as testified to by the plaintiff's attorney-in-fact, Richard Bukuhan. The road in front of the gate of metal fabrication shop is also at Road 5. Plaintiff's tenants could use as ingress/egress the garage (extension of metal fabrication shop) of Richard Bukuhan. As can be seen in the photographs submitted before this court showing the relative location of the plaintiff's property and her attorney-in-fact Richard Bukuhan sufficiently proves that, indeed, there exists an alternative adequate inlet and outlet to main road, particularly Road 5, for plaintiff and her tenants.

This fact was bolstered by the testimony of the court appointed commissioner, the branch sheriff, who conducted ocular inspection of the premises, who affirmed in open court that plaintiff, if so willing, has the option to use her brother's (mother) property. Part of his testimony is quoted hereunder, to wit:

ATTY CASTRO:

Q: Mr. Sheriff you measure the property of Mr. Bukuhan?

A: Yes, sir.

Q: You said that it is a metal fabricator shop?

A: Yes, sir.

Q: From which gate you entered before going to the metal fabricator shop?

A: At the back entrance sir.

Q: So there's a gate at the back of the shop?

A: Yes, sir.

Q: And in entering that gate, can you use that entrance, or back door gate in going to a public road?

COURT

Q: Particularly, Road 5?

A: Yes, your honor, if both gates are open.

From the steel gate facing the Road 5, sir.

ATTY. CASTRO:

Q: Is the front gate closed? Permanently? Or it can be opened?

A: It can be opened, sir.

Q: So you can use the metal fabricator shop from the interior lot of Mary Clare Bukuhan in going to a public road, in Road 5?

A: Yes, sir. If ever the gate is open and allowed by the owner, sir.

Q: Who owns the metal fabricator shop?

A: As far as I know, it is Mr. Bukuhan, sir.

Q: Who can open and closed (sic) the gate?

A: The owner sir.

COURT:

Q: Mr. Richard Bukuhan, the representative of Mary Clare? A: Yes, your honor.

xxxx

Likewise, the court sheriff also stated during cross-examination on March 28, 2011 that:

xxxx

Q: Now, this extension or garage of the main shop, is it directly adjacent to a public road, particularly Road 5?

A: Yes, sir.

Q: And this extension has a steel gate at the front and the back, is that correct?

A: Yes, sir.

Q: this gate could be opened. It is not permanently closed is that correct, Mr. Witness?

A: It could be opened if the owner, Mr. Bukuhan allowed it sir.

Q: And when these gates are opened, the residents of the apartment or the tenants of Mary Clare Bukuhan could use that extension in going in and out of Road 5?

A: Yes, sir.

COURT:

Q: Really? They can go in and out?

A: Yes, your honor, provided the gate is opened and there are no workers.

xxx

In sum, it was held that the burden of proving the existence of the requisites of a right of way lies on the owner of the dominant estate. In this case, plaintiff failed to prove that indeed there is no adequate outlet from their property to a public highway. As correctly pointed out by the defendants, the closure of the said alley would not render plaintiff's property without adequate outlet to public road as she and her tenants could use a portion of the adjacent property owned by her own mother and being managed by her own brother and attorney-in-fact, Richard Bukuhan."[17]

Considering the facts here obtaining, We cannot allow the continued access of Mary Clare and her tenants to the private property of the spouses Bautista considering the availability of an adequate outlet from her property to a public highway through her brother Richard's property which directly faces Road 5. Allowing Mary Clare a road right of way over the property of the spouses Bautista just because she does not want to disrupt the business of her mother and brother would run against the established test of "adequacy" as already discussed above.

Mary Clare also harps on the fact that Richard's factory, which gate directly leads to Road 5, cannot be an alternative adequate route as it has never been opened to the public unlike the subject pathway which has been available for public use since 1969. A plain reading of such argument readily shows Mary Clare's belief that she has acquired an easement of right of way over the subject alley by reason of prescription.

Under Article 622 of the New Civil Code, continuous non-apparent easements and discontinuous ones, whether apparent or not, such as the easement of right of way, may be acquired only by title. This provision seeks to prevent the imposition of a burden on a tenement based purely on the generosity, tolerance and spirit of neighborliness of the owner thereof.[18]

It is undisputed that the spouses Bautista opened the subject alley for their own comfort and convenience in going to the back portion of their house sometime in the late 1960s and only continued to open the same to their neighbors out of "pakikisama". The fact, therefore, that the spouses Bautista tolerated the use of the pathway which has been existing for more than 40 years does not place the same within the ambit of the legal requirements

for a compulsory easement of right of way in favor of Mary Clare.

Further, We agree with the trial court's findings that the spouses Bautista are not obliged to provide Mary Clare with the right of way in view of the fact that the latter did not purchase her property from the former. Instead, Mary Clare should have then demanded from the seller, Maxima Bautista, that she be provided with a road right of way before purchasing the property which is located at the back portion of the residential compound.

Withal, considering that Mary Clare failed to prove the existence of the first requisite as aforesated, We find it unnecessary to delve into the rest of the preconditions for the conferment of a legal or compulsory right of way. Accordingly, the assailed Decision and Order of the trial court must stand undisturbed.

WHEREFORE, premises considered, the instant appeal is DENIED. The assailed Decision dated September 18, 2013 and the Order dated November 19, 2013 of the Regional Trial Court of Valenzuela City Branch 270, are AFFIRMED.

SO ORDERED.

Carandang, R.D., Chairperson, and Barza, R.F., JJ., concur.

[*]Plaintiff-appellant's name is spelled as Mary Clare

[1] Rollo, pp. 42-56

[2] Records, p. 588

[3] Rollo, pp. 42-50

[4] "Spouses Bautista" for brevity

[5] Collectively referred to as the "Bukuhans" but shall be referred to by their individual names in the discussion

[6] G.R. No. 172077 October 9, 2009

[7] Records, pp. 571-573

[8] Records, pp. 575-577

[9] Supra note 2

[10] Rollo, p. 589

[11] Spouses Mejerada vs. Vertudazo G.R. No. 151797 October 11, 2007

[12] G.R. No. 180282 April 11, 2011

[13] Spouses Bernales v. Heirs of Julian Sambaan, et al., G.R. No. 163271, January 15, 2010

[14] Tolentino, Civil Code of the Philippines Volume II, p. 387 (1992)

[15] Ibid.

[16] Supra note 11

[17] Rollo, pp. 53-55

[18] Tolentino, Civil Code of the Philippines Volume II, p. 363 (1992)

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.