

ANTOLIN A. JARIOL, AND PAULO S. RODRIGUEZ, IN THEIR CAPACITIES AS JOINT EXECUTORS OF THE ESTATE OF HUMILIANO RODRIGUEZ, DECEASED, PETITIONERS, VS. HON. COURT OF APPEALS, DOMINO ...

G.R. No. L-57641. October 23, 1982

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

This is a Petition for Review on Certiorari of the Decision of the Court of Appeals in its Case No. CA-G.R. No. 47020-R. The Petition was initially denied but upon a second Motion for Reconsideration, the denial was reconsidered and it was given due course.

We have found the facts to be as follows:

The deceased Quirino Rodriguez left four children: Humiliano, Timoteo, Jose, all surnamed Rodriguez, and Ines Rodriguez de Pages.

On November 25, 1951, these heirs (Jose, then deceased, being represented by Ines Vda. de Rodriguez and his adult children Abdulia, Dolores and Juanita), entered into an extrajudicial partition to divide a parcel of land covered by Transfer Certificate of Title No. RT-345 (T-193) of the Registry of Deeds, Cebu City, in the name of the deceased. The deed was signed by two witnesses and notarized by Atty. Bernardo B. Solotan. In this agreement, the property was divided into Lots "A" to "G" inclusive. Lot "F" was adjudicated to Humiliano, and Lot "G" to Timoteo. Lot "G" has no egress to the public roads.

On November 16, 1953, the original and copies of the Deed of Partition were allegedly burned when the Quirino Rodriguez Building was razed by fire.

On May 22, 1956, Timoteo died and his son, Clemente Rodriguez, was appointed executor of the estate, but was later replaced by Dominino Jagdon. They are two of the private respondents herein.

After Humiliano's death in 1961 or 1962, petitioners Antolin A. Jariol, his son-in-law, and Paulo S. Rodriguez, his son, were appointed executors of his estate.

On June 27, 1960, the Deed of Extra-Judicial Partition, with annotations and additions on the left and right hand margins on page 4 and below the notarial acknowledgment on page 5, was registered by Clemente Rodriguez, son of Timoteo, in the Office of the Register of Deeds of Cebu. These annotations are reproduced in full hereunder:

"On the left hand margin of Page 4:

"That on the approved subdivision plan with reference to the existing actual private lane, Lots 802-B-2-B-2-C, 802-B-2-B-2-D, 802-B-2-B-2-B shall allot for the private lane three (3) meters each on their respective sides and thence six (6) meters for lot 802-B-2-B-2-F following the existing private lane, more particularly described at the bottom of page 5 of this document." (Italics supplied)

"On the right hand margin of page 4:

"That the contracting parties to the aforementioned extrajudicial partition of the estate of the deceased, Quirino Rodriguez, hereby will and bind themselves together with all the heirs, successors, and assigns to all the provisions of the said document. .

Below the acknowledgment of page 5:

That the owners of the following lots bind themselves for their mutual benefit a perpetual ease-ment of right of way described as follows:

Lot No. 802-B-2-B-2-G - Three meters in width on the N. boundary.

Lot No. 802-B-2-B-2-D - Three meters in width on the S. W. boundary.

Lot No. 802-B-2-B-2-C - Three meters in width on S. W. boundary.

Lot No. 802-B-2-B-2-B - Three meters in width on the S. W. boundary.

Lot No. 802-B-2-B-2-F - Six meters in width along the common boundary line of the said lots with the said boundary line as the centerline."[1]

It is said that

"x x x

"Of the seven (7) heirs who signed at the left hand margins of pages 1,2,3 and 5 and at the bottom of page 4, only five (5) initials are found with the left hand margin insertion, with one 'T.R. by C.L.R.'; on the right hand margin insertion only four (4) initials are found with one 'T.R. by C.L.R.'; with the insertion of the bottom of page 5, only five (5) initials are found with one 'T.R. by C.L.R.'; and

"No signatures or initials of the two witnesses are found with any of the insertions."[2]

To be noted from the partition agreement is the fact that four heirs were to contribute for the easement of right-of-way three (3) meters each, while Humiliano, to whom Lot "F" appertained, was to give six meters.

Upon the contention that they had discovered the annotations only in 1964, petitioners Antolin A. Jariol and Paulo S. Rodriguez, as joint executors of Humliano's estate, together with Ines Rodriguez de Pages, filed an action with the Court of First Instance of Cebu on March 11, 1965 against respondents Dominino Jagdon as administrator of the estate of Timoteo Rodriguez, Clemente Rodriguez, Dolores Rodriguez, and Ines Vda. de Rodriguez, seeking to declare the nullity of the annotations and insertions for having been surreptitiously and mali-ciously added long after the execution of the principal document, and the cancellation of the easements of right of way noted as encumbrances on the Certificates of Title issued for the subdivided lots, particularly on "Lot F". It was alleged that the initials of Humiliano and Ines Rodriguez de Pages affixed to the insertions were forged as found by a handwriting expert; that not all the parties to the document had affixed their ini-tials to the insertions; that had the annotations been made at the time of the execution of the document, Timoteo, who was still alive, should have signed the annotations and not his son Clemente. The Complaint was amended three times to include other heirs either as parties plaintiffs or parties defendants.

During the trial, petitioners presented the deposition of Ines Rodriguez de Pages, then 81 years old, to the effect that the initials "I.R.P." appearing in the insertions were not her own.

Defendants-respondents, on the other hand, sustained the genuineness and due execution of the annotations or additions and presented their own handwriting expert. They averred that the agreement merely confirmed the

existing right of way.

In its judgment rendered on August 22, 1968, the Trial Court concluded:

"It is the conclusion of this Court therefore, that the initials of Ines Rodriguez de Pages and Humiliano Rodriguez were forged and that Clemente Rodriguez, in initialing the said insertions or additions without any power of attorney from Timoteo Rodriguez does not bind the latter. Hence, the alleged agreement creating the easement is of no force and legal effect upon the heirs of Quirino Rodriguez." [3]

and declared the alterations or annotations complained of illegal and unlawful and without any legal force and effect; ordered the Register of Deeds of Cebu to cancel the easement of right of way noted as encumbrances on the title; and finding that Clemente Rodriguez was responsible for the "falsification of the insertions" and the "forgery" of the initials of Humiliano and Ines Rodriguez de Pages, required defendants therein to pay actual, moral and exemplary damages as well as attorney's fees for having "abetted" the "wrongdoing" of Clemente.

After defendants-respondents' Motion for New Trial on the ground that the deposition of Ines R. de Pages should not have been admitted in evidence, was denied, they appealed to the Court of Appeals.

On October 15, 1980, the Court of Appeals [4] reversed the judgment appealed from and dismissed the Third Amended Complaint as well as all counterclaims principally on the ground that the right-of-way involved, which was a pre-existing one, even prior to the extra judicial partition, sprang not from any voluntary concession but from law.

Petitioners came to this Court on a Petition for Review on Certiorari asserting that respondent Appellate Court erred in skirting the issue on the genuineness and/or binding effect of the forged alterations and insertions on the Deed of Extrajudicial Partition, and in holding that a legal easement of right-of-way automatically attaches to "Lot F" adjudicated to Humiliano, as the servient estate, which was not an issue framed by the parties on appeal.

Petitioners take issue with the findings of respondent Court, which read in part:

"Appellees also presented the deposition of Ines Rodriguez Pages, then aged 81, who denied the genuineness of her initials to the questioned insertions. On the other hand, appellants presented, inter alia, Atty. Bernardo Solatan, the lawyer who prepared and notarized the extrajudicial partition document; and Mrs. Amparo R. Casafranca, daughter of Humiliano Rodriguez and sister-in-law of appellee Jariol. Atty. Solatan testified that the partition document was made under the direction of Humiliano Rodriguez (tsn-Cavalida, Jan. 15, 1968, p. 237); that he prepared the insertions at the instance of Humiliano Rodriguez (tsn-Cavalida, Jan. 15, 1968, pp. 240-242); and that the initials attributed to Humiliano Rodriguez and Ines Rodriguez de Pages were authentic. Unrebutted was the testimony of Mrs. Casafranca that her father Humiliano Rodriguez favored the maintaining of a road right of way (tsn-Javier, May 9, 1968, p. 4), and that this easement existed long before the execution of the extrajudicial partition (tsn-Javier, May 9, 1968, p. 6). Appellee Jariol confirmed that he knows of only one easement, that is, the one adjacent to his house (tsn-Iyog, May 23, 1968, p. 35). We can only conclude that the easement encumbrance inserted in the extra-judicial partition referred to the existing right-of-way to which Humiliano Rodriguez was in favor of maintaining." [5]

The Appellate Court then went on to state:

"It cannot be denied that easements of right-of-way, being discontinuous, cannot be acquired by prescription. However, a close perusal of the subdivision plan of Lot 802-B-2-B-2 (Exh. D) reveals that Lot 802-B-2-B-2-G with an area of 1422 square meters has no access to the public roads. Corner no. 1 of this lot is almost 80 meters from Juan Luna street and about 73 meters from Colon Street, the latter through Lot No. 802-B-2-B-2-F. Under the partition agreement, Lot 802-B-2-B-2-G appertained to Timoteo Rodriguez and his heirs. A legal easement of right-of-way can therefore be established in favor of the heir to which this lot went.

Section 652 of the New Civil Code reads: '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.' Section 651 explains: 'The width of the easement of right-of-way shall be that which is sufficient for the needs of the dominant estate, and may accordingly be changed from time to time.' From the foregoing discussions, it would be immaterial to delve into whether the insertions in the extrajudicial partition are illegal and unauthorized. The right of the dominant estate to demand a right-of-way springs not from any voluntary concession but from law. Appellees must provide the owners of the dominant estate (Lot 802-B-2-B-2-G in this case) egress to the public road. Had the partition been the other way around, surely appellees would want a way out to the street. Justice and equity demand that the status quo be maintained with regards to the easement of right-of-way." [6] (Italics ours)

Upon the foregoing exposition, we find that there is no substantial justification for setting aside the aforequoted findings of respondent Court. In the first place, it did not entirely disregard the matter of the questioned alterations and insertions. It summarized the conflicting evidence thereon, as quoted hereinabove, observing that "unrebutted was the testimony of Mrs. Casafranca that her father Humiliano Rodriguez favored the maintaining of a right of way (tsn., - Javier, May 9, 1968, p. 4)." Mrs. Amparo R. Casafranca, who testified of her own knowledge, is the sister-in-law and sister, respectively, of petitioners. If Humiliano himself favored the right-of-way, petitioners, as his successors-in-interest, should be held bound by it. Respondent Court added that the Notary Public, Atty. Bernardo Solotan, who authenticated the document, also declared that the initials of Humiliano and Ines R. de Pages were authentic, and that the insertions were made at the instance of Humiliano. We view those declarations as amounting to findings of fact made by an Appellate Court, which we consider as binding on us.

And as far as Timoteo is concerned, although the Trial Court found that he did not initial the insertions, *supra*, there can be no denying that he would be the last to object to the easement established for it also inured to the benefit of "Lot G", which was allocated to him.

Secondly, the substantial question is whether or not "Lot G" is entitled to the easement of right of way. In point of fact, a road right of way providing access to the public road from "Lot G" existed long before the execution of the extrajudicial partition even during the lifetime of Quirino Rodriguez. The Deed of Partition merely sought to legalize and give stability to the access road already existing. That was confirmed by the testimony of Mrs. Casafranca. That is also the position taken by the other heirs who have been included as defendants-respondents. As a matter of law, considering that "Lot G" has no access to the public road, the easement is explicitly provided for in Article 652 of the Civil Code [7], its width being determined by the needs of the servient estate pursuant to Article 651 [8] of the same law.

Thirdly, the justice of the situation rather than the technicalities of the controversy should govern herein. The questioned insertions and annotations refer to an "existing actual private lane". The question of legality of those insertions is linked with the need for its continued existence and the laws on easement cannot but have a definite bearing. The annotations did not "create" a right-of-way, contrary to the opinion of the Trial Court. They merely confirmed an existing one. Respondent Appellate Tribunal did not "by judicial fiat" establish a "legal easement of right of way" on Lot "F". It found that it had been pre-existing and that under the circumstances, the laws on easement were applicable. A chapel exists in the interior constructed by the deceased Quirino Rodriguez, who was also responsible for giving chapel-goers access thereto from the street. [9] The right-of-way exists for the mutual benefit of most of the heirs of Quirino Rodriguez. As aptly stated by respondent Court "justice and equity demand that the status quo be maintained with regards to the easement of right of way."

With the conclusions arrived at, the Resolution, dated June 30, 1982, giving due course to this Petition must be set aside and this Petition denied.

WHEREFORE, let this Petition for Review be, as it is, hereby denied for lack of merit.

Costs against petitioners.

SO ORDERED.

Teehankee, (Chairman), Plana, Vasquez, Relova, and Gutierrez, Jr., JJ., concur.

[1] Pp. 265-266, Rollo.

[2] Findings of Mr. Perfecto Espina, QDE, CID, CPD, petitioners' handwriting expert.

[3] p. 30, Rollo.

[4] Decision penned by Mr. Justice Guillermo P. Villazor, and concurred in by Messrs. Justices Venicio Escolin and Onofre A. Villaluz.

[5] Pp. 89-90, Rollo.

[6] p. 90, Rollo.

[7] "ART. 652. 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.

"x x x x x"

[8] "ART. 651. The width of the easement of right of way shall be that which is sufficient for the needs of the dominant estate, and may accordingly be changed from time to time."

[9] Memorandum for Ines Vda. de Rodriguez, et als., p. 296, Rollo.

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