

SALVADOR BENEDICTO (DECEASED) ROBERTO S. BENEDICTO, PETITIONER, VS. COURT OF APPEALS AND VICENTE A. HERAS, RESPONDENTS.

G.R. No. L-22733. September 25, 1968

Ponente: CASTRO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/97cb430be937/>

CASTRO, J.:

This case which originated in the Court of First Instance of Manila was an action by the respondent Vicente A. Heras to recover a portion of land enclosed and walled by the petitioner Salvador Benedicto, and to demand the reopening of an easement of way between his real property and that of the petitioner.

The facts, in the language of the stipulation of the parties, are:

"1. The adjoining properties of the plaintiff [Heras] and the defendant [Benedicto] formerly belonged to one owner, MIRIAM R. HEDRICK, consisting of Lots Nos. 8, 9, 10, 22, 23, and 24 of Survey Plan RS-219, G.L.R.O. Record No. 662, as surveyed for Henry M. Jones, et al. on June 26, 1912 by C.R. Maris, Bureau of Lands Surveyor and approved by the Director of Lands on July 20, 1912, containing an area of 1307.3 sq. mts. covered by T.C.T. No. 3623 of the Registry of Deeds of the City of Manila, whose technical description as set forth in said T.C.T. No. 3623 is hereto attached as Annex 'A'.

"2. On September 29, 1917, the said MIRIAM R. HEDRICK sold a portion of the above described property, particularly Lots Nos. 8, 9, 22 and 23 to CLARO M. RECTO, and retained for herself Lots Nos. 10 and 24. A copy of the Escritura de Compra-Venta in favor of Claro M. Recto is attached hereto and made a part hereof as Annex 'B'.

"3. At the time of the sale, the following buildings were located on the respective properties of Claro M. Recto and Miriam R. Hedrick as described in the Escritura de Compra-Venta (Annex 'B'), to wit:

" 'SEGUNDO. Que sobre las parcelas 2a (Lote No. 9) y 3a (Lote No. 10) se hallan levantados dos edificios (Chalets) de igual estructura, extension, configuracion y volumen, contruidos ambos de concreto y otras materiales fuertes, y sobre las parcelas 5a (Lote No. 23) y 6a (Lote No. 24), las respectivas dependencias de dichos edificios.'

"For the purpose of showing the respective locations of said buildings, a photostatic copy of Sheet No. 2 of the Cadastral Plan of the Manila Cadastral Survey, Case No. 59, is hereto attached and made part hereof as Annex 'C'. This Cadastral Plan (Annex 'C') was made on August 25, 1921 (subsequent to the sale of the property to Claro M. Recto and subsequent to the issuance of the separate title T.C.T. No. 7755 to Claro M. Recto, which is mentioned in paragraph 5 of this Stipulation).

"4. The sale to CLARO M. RECTO as evidenced by the Escritura de Compra-Venta (Annex 'B') was subject, among others, to the following conditions:

" 'SEXTO. Que entre la porcion vendida a Claro M. Recto y la que queda en poder de Miriam R. Hedrick, hay

un paso para vehiculos, de unos tres a cuatro metros de anchura proximamente constituido por mitad o iguales partes sobre cada una de dichas porciones, y ambas partes de esta escritura se obligan cada una a respetar el derecho de la otra a usar de toda la extencion de dicho paso para todo el tiempo y todas las necesidades de cada una de las dps propiedades, la vendida por la presente a Claro M. Recto y la que queda en poder de Miriam R. Hedrick, siendo obligatorio este pacto para todos los que con posterioridad adquirieran pro cualquier titulo las fincas mencionadas.'

" 'SEPTIMO. Que en vista de la forma irregular del inmueble descrito en el Certificado de Titulo aludido en el parrafo PRIMERO de esta escritura, ambas partes convienen en practicar una nueva medicion de dicho inmueble con el fin de que la linea divisoria entre la porcion vendida por la presente a Claro M. Recto y la que queda en el dominio de Miriam R. Hedrick caiga en medio del paso descrito y aludido en el parrafo anterior, y dicha linea sera perpendicular a la calle San Marcelino.'

"This agreement of the parties, MIRIAM R. HEDRICK and CLARO M. RECTO, is annotated on the respective titles of the plaintiff and the defendant, copies of which annotations are hereto attached and made parts hereof as Annex 'D' (Annotation on Plaintiff's title, T.C.T. No. 62769) and Annex 'E' (Annotation on defendant's title, T.C.T. No. 45990).

"5. By virtue of said Escritura de Compra-Venta (Annex 'B') but before the new survey mentioned in 'parrafo septimo' thereof was undertaken, CLARO M. RECTO obtained a separate title, T.C.T. No. 7755 issued on October 2, 1917, a copy of the technical description of which is hereto attached and made part hereof as Annex 'F'.

"6. In order to carry out said 'parrafo septimo' of the Escritura de Compra-Venta (Annex 'B') regarding the new survey of the properties to fix the dividing line between the properties of CLARO M. RECTO and MIRIAM R. HEDRICK, the said Claro M. Recto filed a Motion dated July 19, 1920, a copy of which motion is hereto attached and made a part hereof as Annex 'G'. In a letter dated December 21, 1920, a copy of which is hereto attached and made part hereof as Annex 'H', CLARO M. RECTO wrote to a certain MARCIAL ZAMORA of the General Land Registration Office asking for the issuance of a new title in his favor in accordance with the new plan submitted by him (Annex 'J' of this Stipulation). The said Motion of July 19, 1920 was amended on September 30, 1921, as per copy of the Amended Motion hereto attached and made part hereof as Annex T, in the Court of Land Registration of Manila, Record No. 662, for the issuance of a new title for his property based on the new survey, the amendment consisting of the addition of a paragraph which reads as follows:

" 'Que el compareciente no reclama las porciones Lote 9b y Lote 23b del referido piano S.W.O. 3753, sino solamente las porciones Lotes A, B, C, y D.'

The said Motion and Amended Motion were accompanied with Exhibit 'A' (of said motions), a copy of the Escritura de Compra-Venta, which is Annex 'B' of this Stipulation; Exhibit 'B' (of said motions), the re-survey plan above-mentioned and approved by the Director of Lands, a certified copy of which re-survey plan is hereto attached and made part hereof as Annex 'J'; and Exhibit 'G' (of said motions), the technical descriptions of the lots covered in the above said re-survey plan (Annex 'J' of this Stipulation), a certified copy of which is hereto attached and made part hereof as Annex 'K'. On October 20, 1921, said Claro M. Recto received a letter from the General Land Registration Office, a certified copy of which is hereto attached and made part hereof as Annex 'L'. Before said Motion and Amended Motion were acted upon, Claro M. Recto filed a Motion to Withdraw the Motions of July 19, 1920 and September 30, 1921, dated January 30, 1922, on the ground that it appeared 'from the report submitted to this Court by the Chief Surveyor of the General Land Registration Office that the plan S.W.O. 3753 attached to the motions of the undersigned of July 19, 1920, and September 30, 1921, does not agree with the terms of the instrument of date of September 21, 1917, and that Transfer Certificate of Title No. 7755 in

the name of the undersigned is in accord with the terms of said instrument.' A copy of the Report of the Chief Surveyor of the General Land Registration Office referred to in said motion to withdraw and a copy of the said motion to withdraw are hereto attached and made parts hereof as Annexes 'M' and 'N'. The Court issued an Order dated January 31, 1922, a copy of which is hereto attached and made part hereof as Annex 'O', granting the withdrawal of the motions dated July 19, 1920 and September 30, 1921.

"7. The property purchased by CLARO M. RECTO from MIRIAM R. HEDRICK became the subject of a series of transfers, to wit:

"a. Sold by CLARO M. RECTO to EMMANUEL CONTY, T.C.T. No. 7755 was cancelled by T.C.T. No. 31834 dated September 1, 1928.

"b. Sold by EMMANUEL CONTY to SALVADOR BENEDICTO (the herein defendant). T.C.T. No. 31334 was cancelled by T.C.T. No. 45990 dated December 1, 1934. A copy of the technical description appearing on said T.C.T. No. 45990, which is the present transfer certificate of title of the defendant, is hereto attached and made part hereof as Annex 'P', and the Survey Plan thereof as plotted by the G.L.R.O. in accordance with the technical description (Annex 'P') is hereto attached and made part hereof as Annex 'Q'.

"8. MIRIAM R. HEDRICK, as owner of the remaining lots Nos. 10 and 24 of Survey Plan No. RS-219, subsequently obtained a new and separate title, T.C.T. No. 22760 dated September 20, 1924, whose technical description is based on the Cadastral Survey made from January 20 to July 12, 1919, wherein both Lots Nos. 10 and 24 of Survey Plan RS-219 were consolidated and designated as Lot No. 12 of Block No. 372 of the Cadastral Survey of Manila. The technical description and area of said Lot No. 12 based on the Cadastral Survey are different from the technical description and area of Lots Nos. 10 and 24 of Survey Plan RS-219, and likewise, Lots Nos. 8, 9, 22, and 23 of Survey Plan RS-219 were consolidated and designated as Lot No. 11 of Block No. 372 of the Cadastral Survey of Manila with a different area and technical description.

"9. The property of MIRIAM R. HEDRICK covered by T.C.T. No. 22760, as above-stated, became the subject of a series of transfers, to wit:

"a. Sold by MIRIAM R. HEDRICK to CHOW KWO HSIEN. T.C.T. No. 22760 was cancelled by T.C.T. No. 22766 dated September 23, 1924.

"b. Sold by CHOW KWO HSIEN to GENERAL SECURITY AND INVESTMENT CO. T.C.T. No. 22766 was cancelled by T.C.T. No. 49798 dated August 26, 1936.

"c. Sold by GENERAL SECURITY AND INVESTMENT CO. to VICENTE A. HERAS (the herein plaintiff). T.C.T. No. 49798 was cancelled by T.C.T. No. 62769 dated September 19, 1941. A copy of the technical description appearing on said T.C.T. No. 62769 which is the present title of the plaintiff, is hereto attached and made part hereof as Annex 'R', and the Relocation Plan thereof, S.W.O. 39343, approved by the Assistant Director of Lands on April 19, 1955, is hereto attached and made part hereof as Annex 'S'.

"10. Sometime in 1941, the plaintiff [Heras] demolished the entire building situated on his property."

The trial court found that after selling Lots 8, 9, 22 and 23 (with an area of 766.90 square meters), Miriam R. Hedrick obtained a separate title for the remaining Lots 10 and 24. The total area of these two lots was 540.4 square meters only [together with those sold to Claro M. Recto the two lots formed one parcel with an area of 1,307.3 square meters covered by TCT 3623], but in the new title (TCT 22760) issued to Hedrick, their total area was made to appear to be 681.30 square meters. The increase in area was due to the fact that the technical description used in the new title was based on a cadastral survey. Since the respondent Heras, as successor-in-interest of Miriam R. Hedrick, owned no more than 540.4 square meter, the court held that no

portion of his property had been encroached upon by the petitioner Benedicto.

The trial court likewise found that the easement of way was found entirely within the property of Benedicto, contrary to the stipulation in the deed of sale between Miriam R. Hedrick and Claro M. Recto that it should be between their properties, with each contributing an equal portion of his property. According to the court, this was the reason why Recto, Benedicto's predecessor-in-interest, who had earlier asked for a resurvey in accordance with the deed of sale, subsequently withdrew his motion, after finding that the passageway was located entirely within his property.

Accordingly, the court directed both parties to contribute equally to the maintenance of a three to four-meter-wide passageway between their properties, with the property line running at the middle of the passageway. It rejected Benedicto's claim that the easement had been extinguished by nonuser and by the cessation of the necessity for a passageway.

Both parties appealed to the Court of Appeals. Salvador Benedicto, who in the meantime died, was substituted by the judicial administrator of his estate, Roberto S. Benedicto. On February 29, 1964 the Court of Appeals rendered a decision affirming in toto the decision of the trial court, and on April 3, 1964 it denied the motions for reconsideration filed by the parties.

The petitioner Benedicto seeks a review of the decision of the Court of Appeals.[1] According to him, the easement was originally constituted because the buildings then erected on the respective properties of Miriam R. Hedrick and Claro M. Recto so adjoined each other that the only way the back portions of the properties could be reached by their owners from San Marcelino street was through the passageway. He claims that when the respondent Heras had his building demolished in 1941 the property gained direct access to San Marcelino street with the result that since then there has been no need for the passageway. The petitioner argues further that it could be assumed that since 1941 the passageway ceased to be used "for certainly [the respondent] could not be expected to be making 'detours' to reach San Marcelino Street when the very frontage of his property was now open in its entirety to San Marcelino Street."

Article 631 of the Civil Code provides in part:

"Art. 631. Easements are extinguished:

"(2) By nonuser for ten years; with respect to discontinuous easements, this period shall be computed from the day on which they ceased to be used; and, with respect to continuous easements, from the day on which an act contrary to the same took place;

"(3) When either or both of the estates fall into such condition that the easement cannot be used; but it shall revive if the subsequent condition of the estates or either of them should again permit its use; unless when the use become possible, sufficient time for prescription has elapsed, in accordance with the provisions of the preceding number; . . ."

This provision was taken from article 546 of the Civil Code of 1889, with the modification that the period of nonuser was reduced from 20 to 10 years.

The petitioner argues at length that this case is governed by the present Code, and that since 14 years had elapsed from the time the building on Heras' property was demolished in 1941 to 1955 when this action was begun (during which period he assumes that the passageway ceased to be used because Heras' property had direct access to the street), the easement must be deemed to have been extinguished.

For the purposes of this decision we do not find it necessary to determine whether the appropriate period of nonuser in this case is 20 or 10 years. For one thing, there is no indubitable proof of nonuser. The petitioner

merely assumes that the passageway in question had not been in use since 1941 because the property of Heras has since gained direct access to San Marcelino street with the demolition of his house. For another, even if we assume that the period of prescription based on nonuser is 10 years, the very testimony of the petitioner Benedicto shows that it was only in 1946 that he had the passageway walled in by constructing a fence, and since the present action was filed in 1955, granting that article 631 of the Civil Code is applicable, the prescriptive period has not yet elapsed.

Nor can presumptive renunciation by Heras of the use of the said passageway be inferred. It would appear from the record that Heras started the construction of an apartment building on his parcel of land after the demolition of his house in 1941, and that although interrupted by World War II, construction was continued in 1955. Since it is patent from the stipulation of facts that the easement in question is mainly a vehicular passageway, the obvious need for such passageway to the rear portion of the projected apartment building negates any presumptive renunciation on the part of Heras.

Moreover, the easement in this case is perpetual in character ("para to do el tiempo y todas las necesidades de cada una de las dos propiedades, la vendida por la presente a Claro M. Recto y la que queda en poder de Miriam R. Hedrick, siendo obligatorio este pacto para todos los que con posterioridad adquirieran por cualquier titulo las fincas mencionadas") and was annotated on all the transfer certificates of title issued in the series of transfers from Miriam R. Hedrick through to the respondent Heras, and in the transfer certificates of title issued in the series of transfers Claro M. Recto through to the petitioner Benedicto. Since there is nothing in the record that would point to a mutual agreement between any of the predecessors-in-interest of the petitioner and any of the predecessors-in-interest of the respondent nor between the petitioner and the respondent themselves with respect to the discontinuance or obliteration of the easement annotated on the titles, the continued existence of the easement must be upheld and respected.

The fact that the easement here is one of necessity does not detract from the conclusion we have reached. For even assuming that with the demolition of the house on Heras' property the necessity for the passageway ceased (a point traversed by Heras who claims that he demolished his house precisely in order to build an apartment building in its place), still, as was held in one case,[2] "the fact that an easement [by grant] may have also qualified as an easement of necessity does not detract from its permanency as a property right, which survives the termination of the necessity." Indeed, when the easement in this case was established, the parties unequivocally made provisions for its observance by all who in the future might succeed them in dominion, and this is the reason the permanent character of the easement was annotated on each and all of the transfer certificates of title.

ACCORDINGLY, the decision appealed from is affirmed, at petitioner's cost.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Zaldivar, Sanchez, Angeles and Fernando, JJ., concur.

Dizon, J., took no part.

Judgment affirmed.

[1]The respondent Heras likewise filed a petition for review, but this Court denied his petition for lack of merit. (Resolution, L-22727, Aug. 21, 1964)

[2] Valicenti v. Schultz, 209 N.Y.S. 2d 33 (1960).

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.