

**SPOUSES JAIME GELLOR, JR., AND MA. THERESA GELLOR,
PLAINTIFFS-APPELLEES, VS. P.T. AGRICULTURAL RESOURCES, INC.,
REPRESENTED BY: PABLO FIGUEROA, THELMA FIGUEROA,
CLEOPATRA TABAÑA...**

Ponente: INTING, J.

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INTING, J.:

Before Us on appeal are the Judgment[1] dated December 13, 2010 and the Resolution[2] dated May 5, 2011 of the Regional Trial Court (RTC) of Malaybalay City, Branch 10, rendered in Civil Case No. 890-05, which is a Complaint for Easement of Road Right of Way with a Prayer for a Writ of Preliminary Mandatory Injunction, Temporary Restraining Order (TRO) with Damages.

The facts[3] of the case are as follows:

On July 20, 2005, plaintiffs-appellees Spouses Jaime Gellor, Jr. and Ma. Theresa Gellor (Spouses Gellor) filed a complaint[4] for easement of right of way with a prayer for a writ of preliminary mandatory injunction and temporary restraining order with damages against the defendants-appellants P.T. Agricultural Resources, Inc., represented by Pablo Figueroa, Thelma Figueroa, Cleopatra Tabañag, Romeo Figueroa and Patrecia Marie Carrascoso before the court a quo. In their complaint, the plaintiffs-appellees allege, among other things, that they are the absolute owners of a parcel of land situated at Kalasungay, Malaybalay City, Bukidnon, more particularly described as follows, to wit:

"A parcel of land identified as Lot 1, Pcs-10-002732, being a portion of Lots 205 & Lot 2919, Pls-800, Malaybalay Public Land Subd., containing an area of FORTY FIVE THOUSAND FOUR HUNDRED SIXTY (45,460) Square Meters, more or less. Bounded on the NW & NE., along lines 6-7-8-9-10 by Lot 2 of the cons. subd. lines 1-2-3 by Lot 2920, both of Pls-800, Malaybalay Public Land Subd.; on the SW., along lines 3-4-5 by Sawaga River, along line 5-6 by Lot 206, Pls-800, Malaybalay Public Land Subdivision and covered by Transfer Certificate of Title No. T-75899 of the Registry of Deeds of Bukidnon, machine copy of the said Title is hereto attached as Annex 'A'; x x x" [5]

They allegedly purchased the property from one Jovenal Caterial. They claim that at the time of the purchase, an easement of right of way was already in existence since the property was located at an interior portion.[6]

They further aver that the defendants-appellants are the owners of the properties located in front and adjacent to their property. These properties are covered by Transfer Certificate of Title (TCT) No. T-88669 with Tax Declaration (TD) No. 13-024-40129, Original Certificate of Title (OCT) No. P-28138 with TD No. 13-024-25289, TCT No. T-42729 with TD No. 13-036-12441, TCT No. T-66988 with TD Nos. 13-036-35537, 13-036-25197, 13-036-35536, TCT No. 66987 with TD No. 13-036-25198, TCT No. 66986 with TD No. 13-036-25199, TCT No. 66985 with TD No. 13-036-25200 and TCT No. T-87656.[7]

According to plaintiffs-appellees, a portion of their property was used for residential purposes while majority of the area was developed into a piggery farm as a joint venture with Monterey Farms Corporation pursuant to their

Hog Breeding Agreement in 1994. They further claim that they acquired their property long before the defendants-appellants acquired theirs. They used the road to gain access to their piggery farm from the national highway for the delivery of feeds, as well as the delivery of pigs to the market. They allege that the road has been in existence for more than forty (40) years and that other farm owners have been using it on a regular basis.[8]

They contend that they spent P2,000,000.00 to improve the road. They previously obtained the permission of defendant-appellant Thelma Figueroa thru a long-distance call to the United States. The latter allegedly agreed to the road improvement project and even committed to pay one-half of the cost thereof. However, the reimbursement was allegedly not made by Figueroa.[9]

That as of late, defendants-appellants are allegedly preventing the plaintiffs-appellees from passing through the road in question, thereby depriving them of an access to their piggery farm for the transport of feeds and delivery of pigs to the market. Defendants-appellants even allegedly bulldozed a large amount of soil unto the road thereby causing it to become inaccessible.[10]

Notwithstanding several oral representations and demands made by the plaintiffs-appellees to the defendants-appellants to observe the six-meter right of way, the latter remained adamant and unyielding.

Thus, plaintiffs-appellees were constrained to file the complaint before the court a quo.

On July 21, 2005, the court a quo granted the plaintiffs-appellees' prayer for a TRO. The Order states, to wit:

"Finding the prayer for Temporary Restraining Order to be meritorious, it appearing that there is an extreme urgency, such that the TRO will be issued to prevent grave injustice and irreparable injury to arise, the reliefs prayed for is hereby issued, ordering the defendants named-above, including their privies and any person acting in their behalf to cease and desist from causing the closure of the road subject of this litigation and ordering them to remove any objects that may be found therein causing obstruction to the free passage thereof immediately.

This Temporary Restraining Order is effective only for Seventy-Two (72) hours from issuance thereof, unless otherwise extended as directed by the Court. The defendants are directed to appear in Court on July 25, 2005 at 2:00 o'clock in the afternoon and to show cause why the Temporary Restraining Order be not extended to Twenty (20) Days and eventually why the Injunction as prayed for be not be made permanent pending determination of the main case.

In the meantime, the Deputy Sheriff in the Office of the Clerk of Court is ordered to serve copy of the complaint and summons upon the defendants immediately together with service of copy of this Order.

The Office of the Clerk of Court is hereby ordered to set special raffling of this case on July 25, 2005 at 9:00 o'clock in the morning. Notify parties and counsels.

SO ORDERED."[11]

For their part, the defendants-appellants aver in their answer[12] that there is no existing easement of right of way in the area in question. Moreover, defendants-appellants controvert the Barangay Certification of Ernie C. Paano, the barangay chairman of Barangay Kalasungay, Malaybalay City, Bukidnon wherein he stated that the road in question is the only accessible road from the piggery of the Gellors to the National Highway and vice-versa. Defendants-appellants opine that Paano has no authority to issue said certification because his jurisdiction is in Barangay Kalasungay and not in Barangay Patpat where the land in question is situated.

Defendants-appellants also point out that the Gellors have an adequate outlet through the private road of one Pacifico Ramos, Jr. They claim that the private road of Ramos has an entrance at Brgy. Patpat and traverses through the latter's property and directly leads to the piggery of the plaintiffs-appellees. They also allege that the

plaintiffs-appellees have been using Ramos' private road for several years already and that the road does not need any improvement since it is a well-maintained road.[13]

Defendants-appellants also contend that the right of way claimed by the plaintiffs-appellees is in an area in their property which is not at the point least prejudicial to them, as required by Article 650 of the Civil Code of the Philippines.[14]

They emphasize that there is no easement of right of way in the area in question and assuming *arguendo* that there is, the use of the defendants-appellants' property without consent and indemnity is highly anomalous and illegal and amounts to criminal trespass.[15]

On March 27, 2008, the court *a quo* issued an Order referring the case to the Philippine Mediation Center (PMC).[16]

On July 18, 2008, the plaintiffs-appellees filed a motion for the appointment of a commissioner to conduct a relocation survey with the following contentions:

"2.

That during the conference before the PMC on June 19, 2008 the parties agreed in principle to conduct a relocation survey so as to determine the accurate extent, as well as, the boundaries of the subject road right of way and for this purpose it was proposed that both parties shall nominate their respective geodetic engineer or surveyor;

3.

That when the case was called on July 17, 2008 for the continuation of the pre-trial conference, the defendants thru counsel failed to submit the name of their proposed surveyor and considering also that the defendants were not present the pre-trial conference was reset to September 18, 2008;

4.

That in order to have a comprehensive and accurate idea on the actual size of the subject road right of way and in order also to implement the agreement before the PMC to have a relocation survey of the subject property, it is therefore proposed and moved that the Honorable Court shall appoint a geodetic engineer who will be commissioned to conduct the relocation survey with the expenses relative thereof to be shouldered by both parties;

5.

That for this purpose, the plaintiffs is submitting the name of Engr. Benito Balbuena of the Balbuena Surveying Office, Malaybalay City, Bukidnon as a nominee for the appointment of a Court Commissioner;

6.

That this motion is intended to simplify the issues in this case and to categorically determine the metes and bounds of the subject property and to perhaps determine the payment of just compensation or disturbance compensation, if necessary."[17]

The motion was opposed[18] by the defendants-appellants because it was not set for hearing, in violation of Section 4, Rule 15 of the Rules of Court.

On February 25, 2009, the motion for the appointment of a commissioner was granted by the court *a quo*. The pertinent portions of the Order states, to wit:

"In view of the foregoing circumstances, the court is constrained to resolve the present Motion for Appointment of a Commissioner filed by the plaintiffs thru counsel with one issue:
Whether or not there is another road that will give plaintiffs an access to their piggery farm.

In order to simplify issues and abbreviate proceedings of this instant case, the court is persuaded to grant the plaintiffs' Motion for an appointment of a commissioner in the person of Geodetic Engineer Benito Balbuena to be witnessed by the RTC Clerk of Court Renie Gloria M. Arino and RTC Br. 10 staff, Mr. Pedrito Cunanan. Whatever expenses incurred relative thereto should be shouldered by the plaintiffs to be collated upon final Judgment of this case.

The opposition to the Motion for Appointment of Commissioner submitted by the defendant is hereby denied for lack of merit.

Let the ocular inspection of the area be held on March 14, 2009 at 9:00 in the morning, directing all the parties concerned to be present. The commissioners are enjoined to submit their written report to this court on or before March 31, 2009.

SO ORDERED."[19]

After the ocular inspection was conducted by the court-appointed commissioners, the court ordered the commissioners to testify with regard to the result of the inspection.

On November 19, 2009, the plaintiffs-appellees presented their first witness, Engineer Benito B. Balbuena, the court-appointed commissioner. Balbuena testified before the court a quo that he is 70 years old, widower, a geodetic engineer by profession, and a resident of Claro M. Recto Street, Barangay 3, Malaybalay City.[20] Balbuena further testified that he is one of the Commissioners appointed by the court a quo to conduct a survey to determine whether there is a possible road to which the plaintiffs-appellees can enter. His written report containing his findings was submitted before the court a quo. Attached to the report is a sketch plan of the subject property — the existing road used in going to the Gellors. The sketch plan shows that the road encroached upon a portion of the property of the Figueroas. [21]

During the cross-examination, Balbuena testified that he was the one who conducted the verification survey in the subject property. Balbuena further testified that the subject property measured about 1,565.82 meters or 1.5 kilometers. Although Balbuena measured the subject property, he admitted that he did not measure the distance of the piggery of the Gellors to the nearest highway.[22] He furthermore testified that the existing road encroached upon the properties of plaintiffs-appellees and defendants-appellants. He admitted that he no longer looked for alternatives for a right of way.[23]

On June 3, 2010, the plaintiffs-appellees called Atty. Renie Gloria M. Ariño to the witness stand. Ariño testified that she is 40 years old, married, a lawyer and the Clerk of Court VI of the Regional Trial Court, Malaybalay City, and a resident of Barangay 9, Malaybalay City.[24] Ariño further testified that she is one of the commissioners appointed by the court to conduct an ocular inspection over the subject property. She was accompanied by Atty. Abraham Olegario and Engineer Benito Balbuena during the ocular inspection. After the inspection, she wrote her findings in a commissioner's report which was later presented before the court a quo. Attached to the report is a copy of the sketch plan of the subject property.[25]

During the cross-examination, Ariño testified that the sketch plan covers the properties owned by PTARI and those owned by Jaime Gellor and Maria Theresa Gellor. She also alleged that although a sketch plan was attached to the commissioner's report, the sketch plan is not an integral part of the report;[26] that she asked Atty. Olegario if there is another road where they can pass through, but the latter did not give any alternative; that they

went to the Ramos' property but they were not allowed entry since it was a private property; and that she also did not consider it as an alternative since the Ramos property has a deep cliff and a creek.[27] Ariño furthermore testified that they tried other possible roads to the Gellors. They were informed by the barangay captain that there is a road that leads to Dalwangan. But when they went to the area, there was no road there but a plain area. In the left portion of the area, there were rice fields and a sugarcane farm.[28]

On August 5, 2010, the defendants-appellants called their first witness, Atty. Abraham S. Olegario, to the stand. Olegario testified that he is 45 years old, married, a lawyer by profession and a resident of 14[th] Street, Nazareth, Cagayan de Oro City. On April 7, 2009, he was in the vicinity of the property owned by the Gellors, PTARI and the Figueroas. He was asked by the Figueroas to accompany the commissioner and to inspect the survey of the property.[29] He was with Atty. Renie Gloria — the Clerk of Court, and Engineer Benito P. Balbuena during the survey. They were at the vicinity from 9:00 o'clock to 10:00 o'clock in the morning. From the farm house of the Figueroa, they proceeded to the property of the Gellors through the contested road. They also inspected another road leading towards the farm of Pacifico Ramos in Barangay Patpat.[30] Olegario testified that he was able to peruse the Commissioner's Report through the copy given to Dr. Figueroa. His observation of the report leads him to believe that the report is inaccurate because there is an alternative road that is nearer to the farm of the Gellors.[31]

During cross-examination, Olegario testified that he could not estimate the distance of the alternative road since he was unable to measure it at the time of the conduct of the survey.[32]

On December 13, 2010, the court a quo rendered the assailed Decision granting the complaint for easement of right of way. The dispositive portion of which reads:

"WHEREFORE, premises considered and finding preponderance of evidence in favor of the plaintiffs, judgment is hereby rendered:

- Decreeing the establishment of a compulsory easement of right of way in favor of the plaintiffs over the passageway in question, namely, the 645 meters lot located at Kalasungay, Malaybalay City, Bukidnon owned by the respective defendants and ordering them to open and make available the passageway to the plaintiffs' as access road from the national highway to their Piggery farm;
- Ordering the plaintiffs to pay the defendants the value of the 645 meter passageway the exact computation of which to be determined upon a survey to be conducted by surveying team jointly elected by the parties based on its zonal value and in the absence thereof, that of the fair market value as shown in the schedule of values of the Provincial or City Assessor, whichever is higher. Likewise, in the absence of the said zonal value, the fair market value as reflected in the latest Tax Declaration duly certified by the City Assessor should be used; and
- Ordering the plaintiffs to pay the defendants the amount of rental per year over the 654 meters utilized as passageway by the plaintiffs pursuant on the computation arrived at per square meter based on the foregoing, reckoned from the time the plaintiffs started using the road as their passage to their piggery farm and had introduced some improvements thereon way back in the year 1999 until at present.

To pay the cost

SO ORDERED."[33]

The defendants-appellants filed a motion for reconsideration[34] of the December 13, 2010 Decision, but the motion was denied by court a quo in its May 5, 2011 Resolution.[35]

Undeterred, defendants-appellants elevated the case before the this Court with the following assignment of errors:

I

THE REGIONAL TRIAL COURT COMMITTED GRAVE ERROR AND CONTRAVENED EXISTING LAWS, RULES AND JURISPRUDENCE WHEN IT IMPOSED AN EASEMENT OF RIGHT OF WAY ON THE SUBJECT PROPERTY DESPITE THE PLAINTIFFS' FAILURE TO PROVE ALL THE REQUIREMENTS OF THE LAW TO BE ENTITLED TO AN EASEMENT OF RIGHT OF WAY; AND

II

THE REGIONAL TRIAL COURT GRAVELY ERRED WHEN IT OPTED NOT TO CONDUCT TRIAL, DENIED DEFENDANTS' MOTION TO IMPEAD OTHER PROPERTY OWNERS AND SIMPLY RELIED ON THE UNSUBSTANTIATED ONE-PAGE REPORT OF THE COMMISSIONER IN MAKING ITS CONCLUSION.[36]

Our Ruling

The appeal is meritorious.

Prefatorily, an easement of right of way is based on the following Civil Code provisions:

"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."

Based on the following provisions, the following requisites need to be established to merit a complaint for easement of right of way:

"1.

The dominant estate is surrounded by other immovables and has no adequate outlet to a public highway (Art. 649, par. 1);

2.

There is payment of proper indemnity (Art. 649, par. 1);

3.

The isolation is not due to the acts of the proprietor of the dominant estate (Art. 649, last par.); 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 (Art. 650)."[37]

The burden of proving the existence of the requisites of easement of right of way lies on the owner of the dominant estate.[38]

In the case at bar, the court a quo granted the easement of right way ratiocinating that all the requisites required by law were proven by plaintiffs-appellees. It anchored its Decision mainly on the commissioner's report stating that there is no other accessible road available to the Gellors except the contested road which covers the property of the defendants-appellants.

Notably, a hearing was conducted by the court a quo to hear the testimonies of Balbuena, Ariño and Olegario with regard to the result of the ocular inspection/verification survey.

A perusal of the records reveals that the one-page commissioner's report scantily stated the following:

"x x x There is no other constructed road that will give plaintiffs access to their piggery farm except the present road as shown on the hereto attached Plan of Land." [39]

The commissioner did not substantiate his findings nor did he offer any explanation as to how he came up with such conclusion. He merely attached a sketch plan together with his report.

During the hearing, Balbuena admitted that he did not look for alternative roads which would be accessible to the Gellors.

On the other hand, defendants-appellants contend that there is an alternative road through the property of one Pacifico Ramos.

Plaintiffs-appellees refute such contention by stating that the private road of Ramos was closed to the public for "bio-security reasons". Clerk of Court Ariño also stated in her testimony that the Ramos property has a creek and a deep cliff.

Unfortunately, Pacifico Ramos was never impleaded by the court to ascertain such contentions and to verify whether or not the road is accessible and is the best possible outlet towards the Gellor property.

Section 11, Rule 3 of the Rules of Court states that Parties may be dropped or added by order of the court on motion of any party or on its own initiative at any stage of the action and on such terms as are just.

In *Almendras v. Court of Appeals*, the Supreme Court remanded the case to the trial court where petitioners failed to substantially prove that the property of private respondents was the shortest and/or least prejudicial way. Moreover, the surrounding owners were not impleaded by the trial court. Thus, it remained unclear as to which road would be the best possible access for the petitioners. Thus, the Supreme Court enunciated, viz:

"What is really important to remember is that petitioner's land is surrounded on all four sides by the properties of other owners. She therefore has a right to demand a right of way through any of the neighboring estates in order to have access to the provincial road. In determining where the easement should pass, the owners of all surrounding properties should be heard with respect to two matters: (1) at which point establishment of the easement would be least prejudicial to the owners of the servient estates and (2) at which point the distance of the right of way to the public highway would be shortest. As already stated, if these two circumstances do not concur in the same tenement, the way which will cause the least damage should be taken.

Although we believe private respondents can be made to substantiate their claim that the easement in this case should be established through the Opone and Tudtud properties, it would be in keeping with the rules on burden of proof if the trial court simply issue an order impleading the aforesaid property owners and requiring them to answer the complaint of petitioner and thereafter receive their evidence. Pursuant to Rule 3, §11 "parties may be dropped or added by order of the court on motion of any party or on its own initiative at any

stage of the action and on such terms as are just."^[40]

It is therefore apt for this Court to remand the case to the court a quo in order that a proper determination of the easement of right of way may be had.

WHEREFORE, the appeal is GRANTED. The Judgment dated December 13, 2010 and the Resolution dated May 5, 2011 of the Regional Trial Court (RTC) of Malaybalay City, Branch 10, rendered in Civil Case No. 890-05, are REVERSED and SET ASIDE. This case is REMANDED to the trial court with instructions forthwith to order the owners of the adjoining properties to be impleaded as defendants, and thereafter hear their evidence and render judgment as may be warranted.⁴¹

SO ORDERED.

Camello, (Chairperson), and Perez, JJ., concur.

[1] Penned by Hon. Josefina Gentiles Bacal; Rollo, pp. 4-8; Records, pp. 244-248.

[2] Rollo, pp. 94-97; Records, pp. 296-299.

[3] As culled from the records.

[4] Records; pp. 1-7.

[5] Supra, p. 8.

[6] Records, pp. 1-7.

[7] Supra.

[8] Supra.

[9] Supra.

[10] Supra.

[11] Records, pp. 40-41.

[12] Supra, pp. 54-70.

[13] Ibid.

[14] Ibid.

[15] Ibid.

[16] Records, p. 161.

[17] Supra, pp. 167-170.

[18] Supra, pp. 166-167.

[19] Supra, pp. 180-181.

[20] TSN, November 19, 2009, pp. 1-22.

[21] Ibid.

[22] Ibid.

[23] Ibid.

[24] TSN, June 3, 2010, pp. 1-20.

[25] Ibid.

[26] Ibid.

[27] Ibid.

[28] Ibid.

[29] TSN, June 3, 2010, pp. 1-20.

[30] Ibid.

[31] Ibid.

[32] Ibid.

[33] See footnote 1.

[34] Records, pp. 250-271.

[35] Supra, pp. 296-299.

[36] Rollo, p. 43.

[37] Lee v. Spouses Carreon; G.R. No. 149023; September 27, 2007.

[38] Cristobal v. Court of Appeals; G.R. No. 125339; June 22, 1998.

[39] Records, p. 281.

[40] Almendras v. Court of Appeals; G.R. No. 110067; August 3, 1998.

[41] Pursuant to Almendras v. CA; Ibid.

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