

AMADO BERNARDO, PETITIONER, VS. THE HONORABLE COURT OF APPEALS FOURTH DIVISION, JUANA DEL ROSARIO, SIXTA DEL ROSARIO AND PEDRO DE JESUS, RESPONDENTS.*G.R. No. L-7248. May 28, 1955*

Ponente: MONTEMAYOR, J.

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The facts in this case are not disputed. Petitioner Amado Bernardo and respondents Juana del Rosario, Sixta del Rosario and Pedro de Jesus own adjoining lots in a large parcel of land formerly known as the Toro-Lolomboy Estate. Bernardo's lot 119-B as shown on the sketches Annexes "A" and "Y" happen to be in the interior and has no access by road to the barrio road to the west or to the provincial highway to the southeast; but for many years Bernardo and other persons, from his lot, in order to reach the barrio road on the other side of which are the church and an artesian well, had been allowed by Juana, Sixta, and Pedro De Jesus who own lots 117, 27 and 28-A, respectively, to pass over a foot-path which goes through their lots. It seems that possibly due to some misunderstanding Juana, Sixta and de Jesus, especially the latter, did not look with favor on Bernardo continuing to use this foot-path, and de Jesus even put up a fence across this foot-path at the spot where it crosses his lot. So, Bernardo filed an action, against Juanav Sixta, and De Jesus, Civil Case No. 487 of the Court of First Instance of Bulacan, to establish a right of way from his lot to the barrio road, about two meters wide and about 70 meters long, more or less, as shown on Annex "Y", claiming that he needed this proposed road for the use of his jeep because he has a business establishment on his lot, and that it was his only access to the barrio road; at the same time he expressed his willingness to pay any amount to be determined by the court for the use of said space, including damages.

In their answers the defendants practically admitted the existence of the foot-path for many years and used as such by Bernardo. Juana and Sixta said they never put up any obstacle to Bernardo's continuing to use said foot-path and De Jesus staged that although he built a fence across said path, said fence was so low that even a child could pass over it. But the three of them objected to the establishment of a regular road saying that it would cause incalculable damage to their properties. According to the record the trial judge made an ocular inspection of the premises presumably to determine the feasibility and advisability of establishing or opening up a road for the use of Bernardo and other persons leading toward the barrio road or to the provincial highway to the southeast and to find the most suitable route, although it does not appear that said trial judge ever made of record the result of his inspection. However, either because of the result of this ocular inspection or to settle the case amicably, the parties Bernardo, Juana, Sixta and De Jesus, entered into a written agreement ratified by them before a notary public and submitted by their counsel to the lower court, with a prayer that judgment be rendered in accordance therewith. Acting upon said written agreement the trial court in a decision dated September 17, 1951, reproduced and approved said agreement saying:

"Por lo tanto, este Tribunal dicta sentencia en los mismos terminos y condiciones en que esta redactado el convenio arriba acotado para todos los efectos legales, sin pronunciamiento en cuanto a las costas.

"ASI SE ORDENA."

Under clause 4 of the agreement Juana, in consideration of P100 paid by Bernardo, agreed to give the latter a right of way two meters wide over her lot 119-A from Bernardo's lot, southeastward toward the provincial highway as shown by Annexes "A" and "Y", provided that Bernardo aside from the P100 obligated himself to pay whatever damages may result from the construction of said right of way. Then under clause 5 there is a paragraph the interpretation of which is the root of the present controversy and which we reproduce for purposes of reference:

"that for the convenience of Amado Bernardo, in going to and from the Barrio Road, Juana del Rosario, Sixta del Rosario and Pedro de Jesus, will allow and tolerate the said Amado Bernardo to pass by foot thru their own individual lots Nos. 117; 27 and 28-A respectively indicated in Annex "A", as in the past he had been so doing, and Pedro de Jesus allowing further Amado Bernardo to put stones or gravel, which may facilitate passage thru his Lot 28-A." (Italics ours)

After the judgment based on the agreement already mentioned had become final Bernardo tried to register the same for purposes of annotation on the corresponding certificates of title of Juana, Sixta and de Jesus. The register of deeds presumably told him that to do so, he must need and have the owner's duplicate certificates of title of said persons, and so Bernardo made written demands on them. Juana was agreeable to delivering her owner's duplicate certificate of title for lot 119-A evidently because she had expressly granted the right of way over her lot in consideration of P100 plus possible damages but she as well as Sixta and De Jesus refused to give up their owners' duplicate certificates of title for lots 117, 27 and 28-A, crossed by the foot-path. In view of their refusal Bernardo filed a motion before the trial court to compel them to make delivery for purposes of annotation. The trial judge by order dated January 2, 1952, denied the motion on the ground that Bernardo already had a right of way over lot 119-A of Juana from his lot southeastward to the provincial highway, and that there was no need for him to have another one (Referring to the foot-path from his lot westward to the barrio road); that the tenor of the paragraph under clause 5, did not recognize or establish an easement of right of way but only expressed the tolerance and permission of the lot owners to pedestrian using the foot-path, as shown by the phrase "will allow and tolerate." Failing to secure the reconsideration of this order, Bernardo appealed the same to the Court of Appeals.

Acting upon the appeal, the Court of Appeals after reproducing the agreement aforementioned particularly the second paragraph of clause 5 affirmed the order appealed from saying that the second paragraph of clause 5 could not have created a right of easement. We reproduce this particular holding of the Court of Appeals:

"And this proviso could not have created right of easement. Since it stipulates that appellees 'will allow and tolerate the said Amado Bernardo to pass by foot thru their own individual Lots Nos. 117; 27 and 28-A respectively indicated in. Annex 'A', as in the past he had been so doing', Bernardo could pass by foot through the properties referred to only as long as, and when, he were tolerated to do so. A judgment so conditioned cannot vest a real right."

After citing the case of Archbishop of Manila vs. Roxas, 22 Phil. 450, the Court of Appeals concluded:

"Therefore, the judgment relied upon by appellant created no real right in his favor and, consequently, he is not entitled to inscribe it in the Office of the Register of Deeds, in accordance with section 51 of Act No. 496, as amended."

Dissatisfied with said decision of the Court of Appeals, Bernardo has come to us on appeal through certiorari.

After a careful study of the case particularly the second paragraph of clause 5 of the agreement, we fail to agree to the conclusion arrived at by the trial court and the Court of Appeals. The case of Archbishop of Manila vs. Roxas, *supra*, in our opinion is not applicable. That case correctly held that passage by third persons over an unenclosed

estate merely tolerated by the owner does not give any right to those passing over it, regardless of the passage of time, and that the owner of said land may at any time enclose it and stop passage over it. In the present case, however, the owners of the different lots over which Bernardo used to pass by foot from his lot westward to the barrio road presumably to go to church and to the artesian well, not only tolerated said passage but in a written agreement signed by them before a notary public and later submitted to the court for judgment, promised and undertook to allow and tolerate Bernardo to continue using said foot-path. It will be remembered that this agreement was based on a sort of compromise, evidently to end the case filed by Bernardo against them and to prevent him from legally establishing over their properties a regular 2-meter road for his jeep, which proposed road, according to them, would cause much damage to their properties as well as inconvenience to themselves. In other words, they practically said to Bernardo, that provided that he did not insist in having the court compel them to allow the establishment of a regular 2-meter road over their properties, they promised to allow and permit him to continue using the foot-path which runs over their lots and which he had been using in the past. And to show the element of permanence of said use of the foot-path by Bernardo, de Jesus even allowed him to improve it by placing stones and gravel on that portion included in his lot 28-A.

It may be stated in this connection in order to make it clear why Bernardo was so interested in having a way from his lot westward to the barrio road and to the church and the artesian well, that said foot-path is only about 71 meters long, whereas, his right of way southeastward from his lot to the provincial highway according to Annex "Y" is 90 meters long, and from said junction to the church partly over the provincial highway and partly over the barrio road is a distance of about 1,168 meters or a total of 1 kilometer and 258 meters, which is certainly, quite far.

There is no question that the agreement or promise of the three defendants-respondents gave a right to Bernardo to continue using the foot-path from his lot to the barrio road. The agreement was not exactly an act of liberality because it was based on a consideration. As a result, as long as the three defendants-respondents continued as owners of lots 117, 27 and 28-A over which the foot-path extended, they could not close the same to Bernardo because they were bound by the agreement and by the judgment rendered on the basis thereof, they being parties not only to the agreement but also to the action on which the judgment was rendered. But supposing that said three defendants sold their lots to third persons, would these vendees be bound to respect this right of Bernardo to use the foot-path? Clearly, they would not be bound because neither the agreement already mentioned nor the judgment rendered thereon is binding on them, they being not parties thereto. So the only way Bernardo could protect himself against such a contingency and to enforce his right against the whole world, was to register the judgment and to annotate the same on the certificates of title of the three lots in question so that his right to continue using the foot-path would constitute a direct charge on these three lots as contemplated by sections 50 and 52 of Act 496 otherwise known as the Land Registration Law. With the registration and annotation, any and every vendee or assignee of said lots would have to respect this right of Bernardo.

In view of the foregoing, the decision of the Court of Appeals is hereby reversed; the order of the trial court dated January 2, 1952, denying Bernardo's motion to compel defendants Juana, Sixta and De Jesus to deliver their duplicate certificates of title over their lots 117, 27 and 28-A, is set aside and said trial court is directed to grant said motion of Bernardo and compel the delivery of said certificates of title to the Register of Deeds for the corresponding annotation desired by Bernardo. Respondents with the exception of the Court of Appeals will pay costs in both instances.

Pablo, Bengzon, Reyes, A., Bautista Angelo, Concepcion and Reyes, J. B. L., JJ., concur.

DISSENTING OPINION

LABRADOR, J., dissenting:

The pertinent portions of the agreement entered into as compromise, and which was approved by the court, are as follows:

"4. That Juana del Rosario, for and in consideration of the sum of one hundred (P100) pesos, Philippine Currency, paid by Amado Bernardo for a right of way, Juana del Rosario, owner and possessor of the riceland is on the East of the residential lot owned and possessed by Amado Bernardo and forming part of Lot No. 119, described in paragraphs 1 and 2 above, do hereby by this agreement, agree to give a right of way to the said Amado Bernardo over a strip of land * * *."

* * * * *

"That for the convenience of Amado Bernardo, in going to and from the Barrio Road, Juana del Rosario, Sixta del Rosario and Pedro do Jesus, will allow and tolerate the said Amado Bernardo to pass by foot thru their own individual Lots No. 117; 27 and 28-A respectively indicated in Annex 'A', as in the past he had been so doing, and Pedro de Jesus allowing further Amado Bernardo to put stones or gravel which may facilitate passage thru his Lot 28-A." (Annex "A")

I find no justification from the terms of the compromise above set forth for concluding that Juana del Rosario, Sixta del Rosario and Pedro de Jesus granted or intended to grant a registrable right of way over their individual lots, Nos. 119, 117 and 27 and 28-A, respectively. In the first place, the first part of the compromise agreement uses the term right of way, referring to petitioner's right over a parcel of rice land of Juana del Rosario, whereas, the second part, which is the one in question, does not use said term, and states that respondents will only "allow and tolerate Amado Bernardo to pass by foot thru their individual lots as in the past he had been doing." If the intention of the parties had been to create a right of way as in the first part of the agreement, there would have been no occasion to use language different from that used in the first part. In the second place, consideration was actually paid for the right of way, while no indemnity was paid for the use of the footpath. In the third place, the parties must be deemed to have used the terms "allow" and "tolerate" in the sense that these words are understood in our law and in jurisprudence, thus:

"Art. 537. Acts merely tolerated and those executed clandestinely and without the knowledge of the possessor of a thing, or by violence, do not affect possession." (Civil Code of the Philippines)

"Hence, it is that the use of the windows opened in a wall on one's own property, in the absence of some covenant or express agreement to the contrary, is regarded as an act of mere tolerance on the part of the owner of the abutting property* * * and does not create any right to maintain the windows to the prejudice of the latter. The mere toleration of such an act does not imply on the part of the abutting owner a waiver of his right to freely build upon his land as high as he may see fit, nor does it avail the owner of the windows for the effect of possession according to Article 1942 of the Civil Code, because it is a mere possession at will." (Cortes vs. Yu Tibo. 2 Phil. 24, cited in I Civil Code by Padilla, p. 635)

"Although a road leading through an estate has been used by the tenants of another estate, by people attending a house of public worship, and by the public generally for a great number of years, no easement is thereby created when the facts show that such use has been merely for convenience. * * * A different doctrine would have a tendency to destroy all neighborhood accommodations in the way of travel; for if it were once understood that a man, by allowing his neighbor to pass through his farm without objection over the pass-way which he used himself, would thereby, after the lapse of time, confer a right on such neighbor to require the pass-way to be kept open for his benefit and enjoyment, a prohibition against all such travel would immediately ensue. (Archbishop of Manila vs. Roxas, 22 Phil. 450, cited in I Civil Code by Padilla, p. 740)

The use of the clause "as in the past he had been so doing" shows that the privilege granted under the agreement could not go beyond the privilege that he had been using in the past.

Another but no less potent reason for sustaining the conclusion of the Court of Appeals is the fact that there is no provisions in the agreement which expressly authorizes the registration of the privilege to use the footpath. If it was the intention of the parties to so agree, why did they not stipulate that the permission to use the footpath should be registered? This Court, or any court for that matter, does not possess the right to extend the scope of the agreement entered into solemnly by the parties before the court; the agreement should be considered as containing all the terms that the parties wanted to insert therein. If the parties wanted said privilege to be recognized, they should have expressed it in their agreement. After the said agreement had been formally executed, no deductions or inferences should be allowed to be inserted therein without the consent of the parties.

The conclusion of the Court of Appeals is entirely in accord with the agreement and should be affirmed.

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