

**SPS. ROY AND EDITH ISABEL TANCINCO, PLAINTIFFS-APPELLEES,
VS. SPS. RAYMUNDO ROA AND ADORACION RAMIRO-ROA,
DEFENDANTS-APPELLANTS.**

Ponente: FRANCISCO, J.

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FRANCISCO, J.:

This is a Motion for Reconsideration[1] of this Court's Decision[2] promulgated on October 9, 2013 which granted defendants-appellants' Appeal from, and reversed and set aside, the Decision[3] dated March 11, 2011 of the Regional Trial Court of Cagayan de Oro City, Branch 41 granting plaintiffs-appellees' complaint for specific performance in Civil Case No. 2003-227.[4]

Plaintiffs-appellees invite Our attention to this Court's October 9, 2013 Decision, viz:

"... the affidavit of identity invoked by the plaintiffs-appellees, as it purportedly grants to plaintiffs-appellee an interest over the 371 square meter-lot of defendants-appellants, should have been in the form of a contract, in lieu of the affidavit, with the same formalities as that of a deed, and annotate such in the Registry of Property. This failure to execute a contract is fatal to the plaintiffs-appellees' cause of action. Thus, save for the said affidavit of identity dated August 5, 1992, the records do not reveal any categorical and unequivocal agreement executed by the parties on the claimed 371 square meter-lot with a width of 50 meters as right of way."[5]

In this recourse, plaintiffs-appellees posit, thus:

"The issue of this case is not so much about easement but rather the ENFORCEMENT of the OBLIGATION of defendants-appellants as they have clearly established in unequivocal terms in their affidavit of identity in relation to the sale of a portion of their property in favor of plaintiffs-appellees. The evident intention of defendants-appellants is clear: to provide plaintiffs-appellants with a 50-meter frontage/access road from the highway to the land that they sold to plaintiffs-appellees with an area of 10,000 square meters. And the area or width of this frontage/right of way was patently defined and they have CATEGORICALLY stated in their affidavit of identity, and leaving no doubt the intention of the parties, viz-

"That the frontage of the land that we sold to them specifically the boundaries indicated as point 7 to 1 in said subdivision plan which is 50 meters wide is a road (sic) widening of the Cagayan-Iligan super highway and will always be such whether or not we are paid by the government for the area taken for road widening. (Affidavit of Identity, August 5, 1992, par. 3, Exh. "B")."[6] (underscoring and emphasis in the original)

Plaintiffs-appellees' position is misplaced.

A perusal of Our Decision dated October 9, 2013 subject of this motion reveals that the issue raised by the plaintiffs-appellees was already passed upon, viz:

"Nonetheless, granting arguendo that such affidavit partakes of a contract as claimed by the plaintiffs-appellees, scrutiny of such affidavit in relation to the alleged grant of easement shows no categorical or unequivocal statement that defendants-appellants granted as easement to plaintiffs-appellees the entire 371 square meter-lot, portion of Lot No. 5307 A-2-B-2-A-2.

If at all, the statement in the said affidavit relating to the claimed easement can only be construed as follows: that the frontage of the land sold to them specifically that boundaries indicated as point 7 to 1 in the subdivision plan which is 50 meters wide was reserved by the defendants-appellants for the government as part of its road widening project; that what was stated in the said affidavit is the intention of the defendants-appellants to provide an access road to plaintiffs-appellees; and that the intended access road will be provided at any point along the boundaries indicated as point 7 to 1 in the subdivision plan which is 50 meters wide reserved by the defendants-appellants for the government. In other words, the reference to 'the boundaries indicated as point 7 to 1 in the subdivision plan' in the affidavit was merely descriptive of the subject lot affected by the government's road widening project with a width of 50 meters from which portion the easement would be granted." [7] (Emphasis Supplied)

Consequently, the plaintiffs-appellees not having raised substantial matters, We find no compelling reason to warrant the reversal of Our decision. The grounds relied upon by the plaintiffs-appellees in their motion have already been carefully considered, evaluated and passed upon by this Court in the assailed Decision.

WHEREFORE, premises considered, the Motion for Reconsideration is hereby DENIED.

SO ORDERED.

Borja, J., Ch., and [*]Inting, JJ., concur.

[*] Vice Justice Oscar V. Badelles per Raffle dated September 24, 2013

[1] Rollo, p. 58.

[2] Rollo, p. 50.

[3] Records, p. 598.

[4] Records, p. 1.

[5] Rollo, pp. 54-55

[6] Rollo, pp. 60-61.

[7] Rollo, p. 55.

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