

**LORETO VDA. DE BALTAZAR AND NESTOR BALTAZAR,
PETITIONERS, VS. COURT OF APPEALS AND DANIEL PANGANIBAN,
RESPONDENTS.**

G.R. No. 106082. June 27, 1995

Ponente: ROMERO, J.

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ROMERO, J.:

Petitioners assail the decision of the Court of Appeals which reversed the decision of the Regional Trial Court, Branch 9, of Malolos and ordered petitioners to grant the right of way claimed by private respondent.

The instant petition for review on certiorari presents two issues for resolution, namely: (1) whether or not an easement of right of way can be granted to a person who has two other existing passageways adjacent to his property which he is using in going to and from his property; and, (2) whether or not an easement of right of way can be established through the alleged continuous use thereof in light of the doctrine laid down by this Court in the case of *Ronquillo v. Roco*[1] which held that an easement of right of way is discontinuous in nature since the dominant estate cannot be continually crossing the servient estate but can do so only at intervals.

Daniel Panganiban is the owner of a parcel of residential land consisting of 117 square meters denominated as Lot no. 1027 located at Sta. Ines, Bulacan. Immediately to the front of said land is Lot 1026 of Loreto Vda. de Baltazar and her son Nestor Baltazar. Immediately behind is the Sta. Ana River. On either side are Lots 1025 and 1028 owned by Ricardo Calimon and Jose Legaspi, respectively. Braulio Street, a provincial road, runs along the frontage of Lots 1025, 1026 and 1028.

Sometime in 1989, Daniel Panganiban filed a complaint against the Baltazars who are owners of Lot 1026 for the establishment of a permanent and perpetual easement of right of way for him to have access to the provincial road. In said complaint, he prayed for the issuance of a writ of preliminary injunction.

In their answer, petitioners opposed the prayer for the issuance of a writ of preliminary injunction arguing that there exists two other rights of way adjacent to private respondent's property. They likewise argue that private respondent had abandoned the alleged right of way.

The court a quo, after conducting an ocular inspection and hearings for the issuance of the writ prayed for, dismissed the complaint based on the following findings:

"Immediately in front of the plaintiff's aforescribed property is Residential Lot 1026 with an area of 119 square meters belonging to herein defendants. On this lot is constructed the residential house of the defendants, immediately in front of which is the provincial road. Running along one side of this property is a 1.20-meter wide, 10.40 meter long passageway which the plaintiff claims to have previously made use of as an ingress to and egress from his property in going to or coming from the provincial road, until some three (3) years before he instituted the instant action when the defendants somehow prevented him from using the same.

It is significant to note that, aside from the passageway which the plaintiff seeks to be established as a

permanent easement, the property of the plaintiff is accesible to and from the provincial road via two (2) other passageways, viz:

- 1) a passageway running immediately alongside the concrete fence of the properties of plaintiff and the defendants, over the properties of Loreto Bernardo and Jose Legaspi. This passageway ends in a gate which serves as a point of entry into or exit from the property of the plaintiff; and
- 2) a passageway similarly running alongside the opposite concrete fence of the properties of the plaintiff and the defendants, over the properties of Encarnacion Calimon and Ricardo Calimon. This passageway, which ends in a gate leading into the plaintiff's property, is the right of way presently availed of by the plaintiff."

Daniel Panganiban appealed to the Court of Appeals claiming that the court a quo erred in dismissing the complaint for reasons of pragmatic considerations and in flagrant and clear violation of Articles 649 and 650 of the new Civil Code of the Philippines.

The Court of Appeals, in its assailed decision,[2] reversed the order of dismissal of the court a quo and granted respondent's right of way. The dispositive portion of said decision states:

"In view of the foregoing, the order appealed from is hereby REVERSED and SET ASIDE. Defendants-appellees are hereby ordered to grant the right of way of plaintiff-appellant, designated as Lot 1026-B, after payment of the proper indemnity, to be determined after hearing in the Court below.

WHEREFORE, the case is hereby ordered remanded to the court of origin for further proceedings.

SO ORDERED."

The Court of Appeals found the following based on the evidence on record:

- "1) Plaintiff-appellant's Lot 1027 (Exh. D) is bounded on the south by Lot 1026-A, owned by defendants-appellees; on the north by Sta. Ana River; on the east, by Lot 1025 (Legaspi's property); on the west, by Lot 1028 (Calimon's property) [Exh. 3-T.D. No. 10998];
- 2) The only accessible road from Lot 1027 is Braulio Street. This road runs across the frontage of Lot 1025, Lot 1026-A and Lot 1028;
- 3) The shortest, direct and convenient way to gain access as an egress and ingress to said Braulio Street from the appellant's dominant Lot 1027 is to pass through the appellees' servient estate Lot 1026-A (Exhs. 4-G, A, B, B-1, and C);
- 4) That Lot 1026-B (Exh. 4-1) which is a strip of land and a portion of appellees' Lot 1026-A, with steel gates (Exhs. I-1 and F-2), has been existing, recognized, acknowledged, tolerated and used by the appellant as a right of way for thirty (30) years during the lifetime of appellees' grandfather, Fidel, and his father, Onisimo Baltazar;
- 5) That it was closed and obstructed by the appellees when it closed the gate and placed plants across the gate of Lot 1026-B, when appellees constructed their present residence;
- 6) That appellant was compelled to request for a temporary pathway on the eastern side, Lot 1025, and when it was closed, on the western side, Lot 1028, of his Lot 1027."

It is worth noting that there is a discrepancy in the findings between the court a quo and the Court of Appeals regarding the existence of two passageways from respondent Panganiban's property to Braulio Street. The court a quo ruled that while the passageway through petitioner Baltazar's property is the least prejudicial to the servient estate and the shortest distance between respondent Panganiban's property and the provincial road, the claimed easement cannot be granted due to the strained relations between the parties.[3] The court a quo added that if the

other two passageways will no longer be available to respondent, then the claimed easement of right of way over petitioner's property would be granted.[4] It appears that the two passageways are simultaneously existing as alternative pathways for respondent Panganiban.

The Court of Appeals, however, found that the two passageways mentioned were mere temporary pathways which respondent Panganiban requested successively from his two neighbors Calimon and Legaspi when petitioner Baltazar closed the passageway through his property. When the path on the eastern side (Lot 1025) was closed to the respondent, he was granted the use of the other on the western side (Lot 1028).[5]

The finding of the Court of Appeals that the existence of the two passageways was not simultaneous and was granted by respondent's neighbors, Calimon and Legaspi only upon respondent's request when petitioner Baltazar closed the claimed passageway is supported by the evidence on record.[6]

In light of the above findings of the Court of Appeals, the underlying issue begging resolution is whether or not respondent Panganiban is entitled to claim an easement of right of way over the Baltazars' property.

In *Locsin v. Climaco*,[7] this Court said:

"By express provision of Articles 649 and 650 of the New Civil Code, the owner of an estate may claim a compulsory right of way only after he has established the existence of four (4) requisites, namely, (1) the estate is surrounded by other immovables and is without adequate outlet to a public highway; (2) after payment of the proper indemnity; (3) the isolation was not due to the proprietor's own acts; and (4) the right of way claimed is at a point least prejudicial to the servient estate, and in so far as consistent with this rule, where the distance from the dominant estate to a public highway may be the shortest."

For respondent Panganiban to claim a compulsory easement of right of way, he must, therefore, first establish the existence of the four requisites stated above.

It is not disputed that the first requisite has been established by the court a quo in its Order dated May 22, 1990.[8] Respondent Panganiban's property is indeed surrounded by immovables on three sides and a river on the fourth.

As for the second requisite, *Francisco v. Intermediate Appellate Court*[9] states:

"There would indeed be some point in looking askance at a reading of the law which would impute to it a strict requirement to pay 'proper indemnity' in advance of a suit the purpose of which, in addition to creating an easement, is precisely to fix the amount of the indemnity to be paid therefor."

We agree with the Court of Appeals when it ordered the remand of this case to the lower court for the purpose of fixing the proper indemnity.[10]

With respect to the third requisite, respondent Panganiban was likewise able to establish that the isolation of his property was not due to his own act for he merely bought Lot 1027, which was formerly part of the Baltazars' Lot 1026-A,[11] from petitioner Nestor Baltazar's predecessors-in-interest. The Court of Appeals found that Lot 1026-B[12] which the respondents have been using as a right of way, has been "existing, recognized, acknowledged, tolerated and used by the appellant as a right of way for thirty (30) years during the lifetime of petitioner's grandfather, Fidel and his father, Onesimo Baltazar." [13] It was also established that the right of way was "closed and obstructed by the petitioners when they closed the gate[14] and placed plants across the gate of Lot 1026-B when petitioners constructed their present residence." [15]

As regards the fourth requirement, both parties agreed that the passage claimed by respondent as his right of way, compared to the other passageways, is the shortest distance from respondent's lot to Braulio Street.[16]

Petitioners could not have been inconvenienced by the passageway for, as borne out by the records, the same is

separate and distinct from the gate used by them to enter their lot and residence. Such being the case, we conclude that respondent is entitled to claim a compulsory easement of right of way over petitioners' Lot 1026-B.

WHEREFORE, finding no reversible error in the decision of the Court of Appeals, the same is hereby AFFIRMED.

SO ORDERED.

Feliciano, (Chairman), Melo, Vitug, and Francisco, JJ., concur.

[1] 103 Phil. 84.

[2] Penned by Associate Justice Consuelo Ynares-Santiago, and concurred in by Associate Justices Ricardo Pronove, Jr. and Nicolas P. Lapeña, Jr.; Rollo, pp. 32-37.

[3] Rollo, pp. 62-63.

[4] Rollo, p. 63.

[5] Rollo, p. 34.

[6] Rollo, pp. 11-15, 74-76, 158.

[7] 26 SCRA 836, citing *Angela Estate, Inc., et al. v. Court of First Instance of Negros Oriental, et al.*, 24 SCRA 500; *Baco-lod-Murcia Milling Co., Inc., and Hon. Jose Fernandez v. Capitol Subd., and Court of Appeals*, 17 SCRA 731.

[8] Rollo, pp. 4-5.

[9] 177 SCRA 536.

[10] Rollo, p. 36.

[11] Rollo, pp. 155-156.

[12] Exh. 4-10.

[13] Rollo, p. 34.

[14] Exhs. F-1 and F-2.

[15] Rollo, p. 34.

[16] Rollo, p. 162, Exhs. 4-G, A, B, B-1 and C.

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