

MA. LINDA T. ALMENDRAS, PETITIONER, VS. THE COURT OF APPEALS, URCICIO TAN PANG ENG AND FABIANA YAP, RESPONDENTS.

G.R. No. 110067. August 03, 1998

Ponente: MENDOZA, J.

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MENDOZA, J.:

Private respondents seek a reconsideration of the decision in this case remanding it to the trial court so that private respondents may file a third-party complaint against parties through whose property they claim a right of way in favor of petitioner should pass since it would be the property least prejudiced by the establishment of such easement.

First. Private respondents contend that the Court should have dismissed the complaint in view of its finding that petitioner "failed to prove that she has a right to the establishment of such an easement through private respondents' property." The contention has no merit.

While it is undisputed that a right of way through private respondents' property is the shortest distance to the provincial road, there is no proof that making the easement pass that way will cause the least damage as provided in Art. 650 of the Civil Code. Hence, the Court said in its decision:

Thus, it has been held that "where the easement may be established on any of several tenements surrounding the dominant estate, the one where the way is shortest and will cause the least damage should be chosen. However, . . . if these two (2) circumstances do not concur in a single tenement, the way which will cause the least damage should be used, even if it will not be the shortest. [2 Arturo M. Tolentino, Civil Code 374 (1974)]" [Quimen v. Court of Appeals, G.R. No. 112331, May 29, 1996]

In the case at bar, the trial court ruled that the easement should be constituted through the land of private respondents on the eastern side because it would be the shortest way to the provincial road, being only 17.45 meters long, compared to 149.22 meters if the easement was constituted on the Opone and Tudit roads on the western and southern sides of petitioner's land.

On the other hand, as already pointed out, the Court of Appeals, in pointing to the longer way, considered the fact that this was already existing and does not preclude its use by other parties than the individual owners of Lot 1-A to Lot 1-G and the owners of the land on which the connecting Tudit road is found.

. . . It is not possible to determine whether the estates which would be least prejudiced by the easement would be those of the owners of the Opone and Tudit properties because they have not been heard. Although evidence concerning the condition of their estates has been presented by private respondents, it is impossible to determine with certainty which estate would be least prejudiced by the establishment of an easement for petitioner until these parties have been heard. Any decision holding them liable to bear the easement would not be binding on them since they are not parties to this action.

This is the reason why the case has been ordered remanded for further proceedings.

Second. Private respondents argue that to require them to file a third-party complaint against the owners of the other neighboring estates would be to force them to litigate and this would place on them the burden of proving that the establishment of the right of way through the said properties would be the least prejudicial route.

Since private respondents claim that the point least prejudicial to the owners of servient estates is through the properties of the Opones on the western side of petitioner's lot, they should really prove their allegation. For this purpose, all property owners must be brought before the court.

Private respondents contend that a third-party complaint is not the proper mode of joining other property owners in the suit because those owners have no legal tie with the owners of the estate sought to be burdened with the easement (herein private respondents) so as to make them liable to the latter for "contribution, indemnity, and subrogation," as provided in Rule 6, §12 (now §11) of the Rules of Court which states:

Sec. 12. Third party complaint. A third-party complaint is a claim that a defending party may, with leave of court, file against a person not a party to the action, called the third-party defendant, for contribution, indemnity, subrogation or any other relief, in respect of his opponent's claim.

There is no merit in this contention. A person who is not a party to an action may be impleaded by the defendant either on the basis of liability to himself or on the ground of direct liability to the plaintiff. It is liability to the defendant which may be in the form of contribution, indemnity, or subrogation. On the other hand, direct liability to the plaintiff may be in the form of "any other relief in respect of plaintiff's claim." [1]

Third. 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 Opones 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."

WHEREFORE, the dispositive portion of the decision in this case is MODIFIED so as to make it read as follows:

WHEREFORE, the decision of the Court of Appeals and that of the Regional Trial Court are SET ASIDE, and this case is REMANDED to the trial court with instructions forthwith to order the owners of the Opones and Tudtud properties to be impleaded as defendants, and thereafter hear their evidence and render judgment as may be warranted.

SO ORDERED.

Regalado (Chairman), Melo, Puno and Martinez, JJ., concur.

[1] Samala v. Victor, 170 SCRA 453 (1989).

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