

**ANASTACIA QUIMEN, PETITIONER, VS. COURT OF APPEALS AND
YOLANDA Q. OLIVEROS, RESPONDENTS.***G.R. No. 112331. May 29, 1996*

Ponente: BELLOSILLO, J.

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IN EASEMENT OF RIGHT OF WAY that easement where the way is shortest and will cause least prejudice shall be chosen. However, if the two circumstances do not concur in a single tenement, the way where damage will be least shall be used even if not the shortest route.[1] This is so because least prejudice prevails over shortest distance. This means that the court is not bound to establish what is the shortest distance; a longer way may be adopted to avoid injury to the servient estate, such as when there are constructions or walls which can be avoided by a round about way, or to secure the interest of the dominant owner, such as when the shortest distance would place the way on a dangerous decline.

Thus we conclude from the succeeding facts: Petitioner Anastacia Quimen together with her brothers Sotero, Sulpicio, Antonio and sister Rufina inherited a piece of property situated in Pandi, Bulacan. They agreed to subdivide the property equally among themselves, as they did, with the shares of Anastacia, Sotero, Sulpicio and Rufina abutting the municipal road. The share of Anastacia, located at the extreme left, was designated as Lot No. 1448-B- 1. It is bounded on the right by the property of Sotero designated as Lot. No. 1448-B-2. Adjoining Sotero's property on the right are Lots Nos. 1448-B-3 and 1448-B-4 originally owned by Rufina and Sulpicio, respectively, but which were later acquired by a certain Catalina Santos. Located directly behind the lots of Anastacia and Sotero is the share of their brother Antonio designated as Lot No. 1448-B-C which the latter divided into two (2) equal parts, now Lots Nos. 1448-B-6-A and 1448-B-6-B, each with an area of 92 square meters. Lot No. 1448-B-6-A is located behind Anastacia's Lot No. 1448-B-1, while Lot No. 1448-B-6-B is behind the property of Sotero, father of respondent Yolanda.

In February 1982 Yolanda purchased Lot No. 1448-B-6-A from her uncle Antonio through her aunt Anastacia who was then acting as his administratrix. According to Yolanda, when petitioner offered her the property for sale she was hesitant to buy as it had no access to a public road. But Anastacia prevailed upon her to buy the lot with the assurance that she would give her a right of way on her adjoining property for P200.00 per square meter.

Thereafter, Yolanda constructed a house on the lot she bought using as her passageway to the public highway a portion of Anastacia's property. But when Yolanda finally offered to pay for the use of the pathway Anastacia refused to accept the payment. In fact she was thereafter barred by Anastacia from passing through her property.[2]

In February 1986 Yolanda purchased the other lot of Antonio Quimen, Lot No. 1448-B-6-B, located directly behind the property of her parents who provided her a pathway gratis et amore between their house, extending about nineteen (19) meters from the lot of Yolanda behind the sari-sari store of Sotero, and Anastacia's perimeter fence. The store is made of strong materials and occupies the entire frontage of the lot measuring four (4) meters

wide and nine meters (9) long. Although the pathway leads to the municipal road it is not adequate for ingress and egress. The municipal road cannot be reached with facility because the store itself obstructs the path so that one has to pass through the back entrance and the facade of the store to reach the road.

On 29 December 1987 Yolanda filed an action with the proper court praying for a right of way through Anastacia's property. An ocular inspection upon instruction of the presiding judge was conducted by the branch clerk of court. The report was that the proposed right of way was at the extreme right of Anastacia's property facing the public highway, starting from the back of Sotero's sari-sari store and extending inward by one (1) meter to her property and turning left for about five (5) meters to avoid the store of Sotero in order to reach the municipal road[3] and the way was unobstructed except for an avocado tree standing in the middle.[4]

But on 5 September 1991 the trial court dismissed the complaint for lack of cause of action, explaining that the right of way through Sotero's property was a straight path and to allow a detour by cutting through Anastacia's property would no longer make the path straight. Hence the trial court concluded that it was more practical to extend the existing pathway to the public road by removing that portion of the store blocking the path as that was the shortest route to the public road and the least prejudicial to the parties concerned than passing through Anastacia's property.[5]

On appeal by respondent Yolanda, the Court of Appeals reversed the lower court and held that she was entitled to a right of way on petitioner's property and that the way proposed by Yolanda would cause the least damage and detriment to the servient estate.[6] The appellate court however did not award damages to private respondent as petitioner did not act in bad faith in resisting the claim.

Petitioner now comes to us imputing ERROR to respondent Court of Appeals: (a) in disregarding the agreement of the parties; (b) in considering petitioner's property as a servient estate despite the fact that it does not abut or adjoin the property of private respondent; and, (c) in holding that the one-meter by five-meter passage way proposed by private respondent is the least prejudicial and the shortest distance to the public road.

Incidentally, petitioner denies having promised private respondent a right of way. She claims that her agreement with private respondent was to provide the latter with a right of way on the other lot of Antonio Quimen under her administration when it was not yet sold to private respondent. Petitioner insists that passing through the property of Yolanda's parents is more accessible to the public road than to make a detour to her property and cut down the avocado tree standing thereon.

Petitioner further argues that when Yolanda purchased Lot No. 1448-B-6-B in 1986 the easement of right of way she provided her (petitioner) was ipso jure extinguished as a result of the merger of ownership of the dominant and the servient estates in one person so that there was no longer any compelling reason to provide private respondent with a right of way as there are other surrounding lots suitable for the purpose. Petitioner strongly maintains that the proposed right of way is not the shortest access to the public road because of the detour and that, moreover, she is likely to suffer the most damage as she derives a net income of P600.00 per year from the sale of the fruits of her avocado tree, and considering that an avocado has an average life span of seventy (70) years, she expects a substantial earning from it.[7]

But we find no cogent reason to disturb the ruling of respondent appellate court granting a right of way to private respondent through petitioner's property. In fact, as between petitioner Anastacia and respondent Yolanda their agreement has already been rendered moot insofar as it concerns the determination of the principal issue herein presented. The voluntary easement in favor of private respondent, which petitioner now denies but which the court is inclined to believe, has in fact become a legal easement or an easement by necessity constituted by law.[8]

As defined, an easement is a real right on another's property, corporeal and immovable, whereby the owner of the latter must refrain from doing or allowing somebody else to do or something to be done on his property, for the benefit of another person or tenement.[9] It is *jus in re aliena*, inseparable, indivisible and perpetual, unless extinguished by causes provided by law. A right of way in particular is a privilege constituted by covenant or granted by law[10] to a person or class of persons to pass over another's property when his tenement is surrounded by realties belonging to others without an adequate outlet to the public highway. The owner of the dominant estate can demand a right of way through the servient estate provided he indemnifies the owner thereof for the beneficial use of his property.[11]

The conditions *sine qua non* for a valid grant of an easement of right of way are: (a) the dominant estate is surrounded by other immovables without an adequate outlet to a public highway; (b) the dominant estate is willing to pay the proper indemnity; (c) the isolation was not due to the acts of the dominant estate; and, (d) the right of way being claimed is at a point least prejudicial to the servient estate.[12]

A cursory examination of the complaint of respondent Yolanda for a right of way[13] readily shows that-

[E]ven before the purchase of the said parcels of land the plaintiff was reluctant to purchase the same for they are enclosed with permanent improvements like a concrete fence and store and have (sic) no egress leading to the road but because of the assurance of the defendant that plaintiff will be provided one (1) meter wide and five (5) meters long right of way in the sum of P200.00 per square meter to be taken from Anastacia's lot at the side of a concrete store until plaintiff reach(es) her father's land, plaintiff was induced to buy the aforesaid parcels of land x x x. That the aforesaid right of way is the shortest, most convenient and the least onerous leading to the road and being used by the plaintiff's predecessors-in-interest from the very inception x x x.

The evidence clearly shows that the property of private respondent is hemmed in by the estates of other persons including that of petitioner; that she offered to pay P200.00 per square meter for her right of way as agreed between her and petitioner; that she did not cause the isolation of her property; that the right of way is the least prejudicial to the servient estate.[14] These facts are confirmed in the ocular inspection report of the clerk of court, more so that the trial court itself declared that "[t]he said properties of Antonio Quimen which were purchased by plaintiff Yolanda Quimen Oliveros were totally isolated from the public highway and there appears an imperative need for an easement of right of way to the public highway."[15]

Petitioner finally insists that respondent court erroneously concluded that the right of way proposed by private respondent is the least onerous to the parties. We cannot agree. Article 650 of the New Civil Code explicitly states that 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. The criterion of least prejudice to the servient estate must prevail over the criterion of shortest distance although this is a matter of judicial appreciation. While shortest distance may ordinarily imply least prejudice, it is not always so as when there are permanent structures obstructing the shortest distance; while on the other hand, the longest distance may be free of obstructions and the easiest or most convenient to pass through. In other words, 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, as elsewhere stated, 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.[16] This is the test.

In the trial court, petitioner openly admitted -

Q. You testified during your direct examination about this plan, kindly go over this and please point to us in what portion of this plan is the house or store of the father of the (plaintiff)?

A. This one, sir (witness pointed a certain portion located near the proposed right of way).

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Q. Now, you will agree with me x x x that this portion is the front portion of the lot owned by the father of the plaintiff and which was (sic) occupied by a store made up of strong materials?

A. It is not true, sir.

Q. What materials does (sic) this store of the father of the plaintiff made of?

A. Hollow blocks and the side is made of wood, sir.

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Q. Just before your brother disposed that 1/2 portion of the lot in question, what right of way does (sic) he use in reaching the public road, kindly point to this sketch that he is (sic) using in reaching the public road?

A. In my property, sir.

Q. Now you will agree with me x x x the main reason why your brother is (sic) using this property is because there was a store located near this portion?

A. Yes, and according to the father of Yolanda there is no other way than this, sir.[17]

The trial court found that Yolanda's property was situated at the back of her father's property and held that there existed an available space of about nineteen (19) meters long which could conveniently serve as a right of way between the boundary line and the house of Yolanda's father; that the vacant space ended at the left back of Sotero's store which was made of strong materials; that this explained why Yolanda requested a detour to the lot of Anastacia and cut an opening of one (1) meter wide and five (5) meters long to serve as her right of way to the public highway. But notwithstanding its factual observations, the trial court concluded, although erroneously, that Yolanda was not entitled to a right of way on petitioner's property since a detour through it would not make the line straight and would not be the route shortest to the public highway.

In applying Art. 650 of the New Civil Code, respondent Court of Appeals declared that the proposed right of way of Yolanda, which is one (1) meter wide and five (5) meters long at the extreme right of petitioner's property, will cause the least prejudice and/or damage as compared to the suggested passage through the property of Yolanda's father which would mean destroying the sari-sari store made of strong materials. Absent any showing that these findings and conclusion are devoid of factual support in the records, or are so glaringly erroneous, this Court accepts and adopts them. As between a right of way that would demolish a store of strong materials to provide egress to a public highway, and another right of way which although longer will only require an avocado tree to be cut down, the second alternative should be preferred. After all, it is not the main function of this Court to analyze or weigh the evidence presented all over again where the petition would necessarily invite calibration of the whole evidence considering primarily the credibility of witnesses, existence and relevancy of specific surrounding circumstances, their relation to each other, and the probabilities of the situation.[18] In sum, this Court finds that the decision of respondent appellate court is thoroughly backed up by law and the evidence.

WHEREFORE, no reversible error having been committed by respondent Court of Appeals, the petition is DENIED and the decision subject of review is AFFIRMED. Costs against petitioner.

SO ORDERED.

Padilla (Chairman), Vitug, Kapunan, and Hermosisima, Jr., JJ., concur.

[1] Tolentino, Arturo M., Commentaries and Jurisprudence on the Civil Code of the Philippines, 1954 ed., Vol. II, p. 332, citing Casals Colldecarrera, pp. 108- 109.

[2] Memorandum for private respondent, Rollo, pp. 56-58

[3] Docketed as Civil Case No. 690-M-87, raffled to Br. 19 presided by Judge Camilo O. Montesa, Jr.

[4] Exh. "B", Ocular Inspection Report, Records, pp. 24-25.

[5] Records, pp. 87-89.

[6] Decision penned by Justice Fidel P. Purisima, concurred in by Justices Justo P. Torres, Jr., and Bernardo P. Pardo; Rollo, pp. 14-23.

[7] Memorandum of Petitioner, Rollo, pp. 70-75.

[8] Sec. 3, Ch. 2, Title VII, Bk. II, NCC.

[9] 3 Sanchez Roman 472.

[10] Art. 634, NCC.

[11] Art. 649, NCC. 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 x x x 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 damage caused by such encumbrance. This easement is not compulsory if the isolation of the immovable is due to the proprietor's own acts.

[12] Costabella Corporation v. Court of Appeals, G.R. No. 80511, 25 January 1991, 193 SCRA 333, citing Locsin v. Climaco, No. L-273 19, 31 January 1969, 26 SCRA 816, Angela Estate, Inc. v. Court of First instance of Negros Occidental, No. L-27084, 31 July 1968, 24 SCRA 500, Bacolod Murcia Milling Co., Inc. v. Capitol Subdivision, No. L-25887, 26 July 1966, 17 SCRA 731.

[13] Exh. "A", Records, pp. 1-4.

[14] TSN, 6 July 1988.

[15] Records, p. 87.

[16] Tolentino, Arturo M., Commentaries and Jurisprudence on the Civil Code of the Philippines, 1972 ed., Vol. II, p. 374, citing 2 Castan 275.

[17] TSN, pp. 14-15, 4 January 1989.

[18] Bernardo v. Court of Appeals, G.R. No. 101680, 7 December 1992, 216 SCRA 224.

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