

CRESENCIA CRISTOBAL, ROBERTO MAKIMKIM, DAMASO MAKIMKIM, SPOUSES SALVADOR HERMALINO AND PONCIANA MAKIMKIM, MILAGROS MAKIMKIM, REMEDIOS MAKIMKIM, SPOUSES FRANCISCO ESTANISLAO AND ...

G.R. No. 125339. June 22, 1998

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BELLOSILLO, J.:

This petition for review seeks the reversal of the decision of respondent Court of Appeals of 16 January 1996 in CA-G.R. CV Case No. 37273, "Cresencia Cristobal, et al. v. Cesar Ledesma, Inc., et al.,"[1] which affirmed in toto the decision of the RTC-Br. 81, Quezon City,[2] dismissing herein petitioners' complaint for easement of right of way, and the Resolution of 14 June 1996 denying their motion for reconsideration.

Petitioners own a house and lot situated at No. 10 Visayas Avenue Extension, Quezon City, where they have been residing from 1961 to the present. Respondent Cesar Ledesma, Inc., on the other hand, is the owner of a subdivision at Barrio Culiati along Visayas Avenue which once included the disputed residential lots, Lot 1 and Lot 2, with areas of 164 square meters and 52 square meters, respectively, located adjacent to petitioners' property. Lots 1 and 2 were originally part of a private road known as Road Lot 2 owned exclusively by Cesar Ledesma, Inc. Petitioners were using Road Lot 2 in going to and from the nearest public road. When Visayas Avenue became operational as a national road in 1979, Cesar Ledesma, Inc., filed a petition before the RTC of Quezon City to be allowed to convert Road Lot 2 into residential lots.[3] The petition was granted, hence, Road Lot 2 was converted into residential lots designated as Lot 1 and Lot 2. Subsequently, Cesar Ledesma, Inc., sold both lots to Macario Pacione in whose favor Transfer Certificates of Title were correspondingly issued. In turn, Macario Pacione conveyed the lots to his son and daughter-in-law, respondent spouses Jesus and Lerma Pacione.

When the Pacione spouses, who intended to build a house on Lot 1, visited the property in 1987, they found out that the lot was occupied by a squatter named Juanita Geronimo and a portion was being used as a passageway by petitioners to and from Visayas Avenue. Accordingly, the spouses complained about the intrusion into their property to the Barangay Office. At the barangay conciliation proceeding, petitioners offered to pay for the use of a portion of Lot 1 as passageway but the Pacione spouses rejected the offer. When the parties failed to arrive at an amicable settlement, the spouses started enclosing Lot 1 with a concrete fence.

Petitioners protested the enclosure alleging that their property was bounded on all sides by residential houses belonging to different owners and had no adequate outlet and inlet to Visayas Avenue except through the property of the Paciones. As their protests went unheeded, petitioners instituted an action for easement of right of way with prayer for the issuance of a temporary restraining order (TRO).

On 3 June 1987 the trial court issued a TRO directing the Pacione spouses to cease and desist from fencing the disputed property. The Paciones objected arguing that petitioners were not entitled to a TRO since they showed no valid basis for its issuance, and that petitioners had no cause of action against respondents because there were actually two (2) accessible outlets and inlets - a pathway right in front of their gate leading towards an asphalted

5-meter road to the left, and across an open space to the right adjacent to respondents' lot likewise leading to Visayas Avenue.

At the instance of the parties, the trial court ordered an ocular inspection of the property. A Board of Commissioners was constituted for that purpose composed of representatives chosen by the parties, with Deputy Sheriff Florencio D. Dela Cruz, Jr., as representative of the court.

On 3 January 1990 Deputy Sheriff Dela Cruz, Jr., submitted his Report[4] relative to the ocular inspection on the litigated lots -

x x x there is another way from the Visayas Ave. to the plaintiffs' lot existing at the time of the ocular inspection. Plaintiffs can use the street originating from Visayas Avenue, identified as Ma. Elena St., which is about 2.5 m. in width and about 150 m. in length up to an intersection, meeting a private road, which is about 100 meters in length, that ends at the lower portion of the right side of the adjacent vacant lot previously identified, and at the back of a lot with concrete fence located at the back of the plaintiffs' property. From that point the plaintiff must enter the adjacent vacant lot (entry to the said lot is still possible during the ocular inspection because the barbed wires were not properly placed) to reach a gate at the side of the plaintiffs' lot, about 16 m. from the end of the private road, allegedly used by the plaintiffs before the adjacent lot was enclosed by barbed wires. According to Atty. Mendoza, counsel for the defendants, that gate no longer exist(ed) at the time of the ocular inspection.

As may be observed from the above report, only one outlet was indicated by Sheriff Dela Cruz, Jr. The other outlet across an open space to the right referred to by the Pacione spouses was not reflected thereon. However, on the basis of the report as well as the testimonial and documentary evidence of the parties, the trial court dismissed the complaint holding that one essential requisite of a legal easement of right of way was not proved, i.e., the absence of an alternative adequate way or outlet to a public highway, in this case, Visayas Avenue.[5]

Petitioners appealed to the Court of Appeals arguing that the trial court erred in finding that they failed to sufficiently establish the essential fact that from their property no adequate outlet or access to a public highway existed; and, that the conversion of the Road Lot into two (2) residential lots by Cesar Ledesma, Inc., was violative of PD No. 957, hence illegal, and the titles issued as a consequence of the conversion were null and void.

On 16 January 1996 the Court of Appeals rendered its assailed decision affirming the findings of the trial court -

The burden of proving the existence of the requisites of easement of right of way lies on the owner of the dominant estate. In the case at bar, plaintiff-appellants failed to prove that there is no adequate outlet from their property to a public highway. Convenience of the dominant estate is not a gauge for the grant of compulsory right of way. The true standard for the grant of the legal right is 'adequacy.' Hence, when there is already an existing adequate outlet from the dominant estate to a public highway, as in this case, even if the outlet, for one reason or another, be inconvenient, the need to open up another servitude is entirely unjustified. To justify the imposition of an easement of right of way, there must be real, not fictitious or artificial necessity for it. A right of way is legally demandable, but the owner of the dominant estate is not at liberty to impose one based on arbitrary choice. Art. 650 of the Civil Code provides for the criteria in the establishment of such easement but it has been settled that the criterion of 'least prejudicial' prevails over shortest distance. Each case must be weighed according to its individual merits and judged according to the sound discretion of the court (*Costabella Corporation v. Court of Appeals*, G.R. No. 80511, 193 SCRA 333 [1991]).

The second assigned error has no legal leg to stand on since plaintiff-appellants cannot just introduce a new issue to an already settled one, especially for the first time on appeal.

Their motion for reconsideration having been denied, petitioners now come to us with the following assignment of errors: First, the Court of Appeals erred in applying the doctrine in *Costabella*, considering that in the instant

case the four (4) requisites that must be complied with by an owner of the dominant estate in order to validly claim a compulsory right of way have been clearly established by petitioners, contrary to the Decision appealed from, and that the facts in *Costabella* are not the same as in the present case. Second, the Court of Appeals seriously erred in holding that the question of legality or illegality of the conversion of Road Lot 2 into two (2) residential lots by the Cesar Ledesma, Inc., is a new issue raised for the first time on appeal, because such issue appeared in the complaint filed before the trial court.

Quite noticeably, petitioners' first assigned error is essentially factual in nature, i.e., it merely assails the factual findings of both the Court of Appeals and the trial court. Basic is the rule in this jurisdiction that only questions of law may be raised in a petition for review under Rule 45 of the 1997 Rules of Civil Procedure. The jurisdiction of the Supreme Court in cases brought to it from the Court of Appeals is limited to reviewing errors of law, the findings of fact of the appellate court being conclusive.^[6] We have emphatically declared that it is not the function of this Court to analyze or weigh such evidence all over again, its jurisdiction being limited to reviewing errors of law that may have been committed by the lower court.^[7]

Petitioners insist that their petition raises a question of law, that is, the correctness of the appellate court's ruling that one who has an existing passageway, however inconvenient that passageway may be, is no longer entitled to an easement of right of way.

We do not agree. Questions of law are those that do not call for any examination of the probative value of the evidence presented by the parties.^[8] In the instant case, petitioners' assignment of errors would have this Court go over the facts because it necessarily entails an examination of the evidence and its subsequent re-evaluation to determine whether petitioners indeed have no sufficient outlet to the highway.

Petitioners next claim that the findings of the appellate court are based on misapprehension of facts, which circumstance warrants a review of the appellate court's decision. Yet, they failed to sufficiently demonstrate this allegation in their pleadings. Absent a clear showing that the findings complained of are totally devoid of support in the record, or that they are so glaringly erroneous as to constitute serious abuse of discretion, such findings must stand.

At any rate, even assuming that the first assignment of error may be properly raised before this Court, we find no reversible error in the assailed decision. To be entitled to a compulsory easement of right of way, the preconditions provided under Arts. 649 and 650 of the Civil Code must be established. These are: (1) that the dominant estate is surrounded by other immovables and has no adequate outlet to a public highway; (2) that proper indemnity has been paid; (3) that the isolation was not due to acts of the proprietor of the dominant estate; (4) that 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.^[9] The burden of proving the existence of these prerequisites lies on the owner of the dominant estate.^[10]

In the present case, the first element is clearly absent. As found by the trial court and the Court of Appeals, an outlet already exists, which is a path walk located at the left side of petitioners' property and which is connected to a private road about five hundred (500) meters long. The private road, in turn, leads to Ma. Elena Street which is about 2.5 meters wide and, finally, to Visayas Avenue. This outlet was determined by the court *a quo* to be sufficient for the needs of the dominant estate, hence petitioners have no cause to complain that they have no adequate outlet to Visayas Avenue.

Further, no evidence was adduced by petitioners to prove that the easement they seek to impose on private respondents' property is to be established at a point least prejudicial to the servient estate. For emphasis, Lot 1 is only 164 square meters and an improvident imposition of the easement on the lot may unjustly deprive private

respondents of the optimum use and enjoyment of their property, considering that its already small area will be reduced further by the easement. Worse, it may even render the property useless for the purpose for which private respondents purchased the same.

It must also be stressed that, by its very nature, and when considered with reference to the obligations imposed on the servient estate, an easement involves an abnormal restriction on the property rights of the servient owner and is regarded as a charge or encumbrance on the servient estate. Thus, it is incumbent upon the owner of the dominant estate to establish by clear and convincing evidence the presence of all the preconditions before his claim for easement of right of way may be granted. Petitioners miserably failed in this regard.

On the question of adequacy of the existing outlet, petitioners allege that the path walk is much longer, circuitous and inconvenient, as from Visayas Avenue one has to pass by Ma. Elena St., turn right to a private road, then enter a vacant lot, and turn right again to exit from the vacant lot until one reaches petitioners' property.

We find petitioners' concept of what is "adequate outlet" a complete disregard of the well-entrenched doctrine that in order to justify the imposition of an easement of right of way there must be a real, not fictitious or artificial, necessity for it. Mere convenience for the dominant estate is not what is required by law as the basis for setting up a compulsory easement. Even in the face of necessity, if it can be satisfied without imposing the easement, the same should not be imposed.[11]

Thus, in *Ramos v. Gatchalian*,[12] this Court disallowed the easement prayed for - even if petitioner therein "had to pass through lots belonging to other owners, as temporary ingress and egress, which lots were grassy, cogonal and greatly inconvenient due to flood and mud" - because it would run counter to the prevailing jurisprudence that mere convenience for the dominant estate does not suffice to serve as basis for the easement.

Also, in *Floro v. Llenado*,[13] we refused to impose an easement of right of way over petitioner's property, although private respondent's alternative route was admittedly inconvenient because he had to traverse several rice lands and rice paddies belonging to different persons, not to mention that said passage, as found by the trial court, was impassable during rainy season.

Admittedly, the proposed right of way over private respondents' property is the most convenient, being the shorter and the more direct route to Visayas Avenue. However, it is not enough that the easement be where the way is shortest. It is more important that it be where it will cause the least prejudice to the servient estate.[14] As discussed elsewhere, petitioners failed to sufficiently demonstrate that the proposed right of way shall be at a point least prejudicial to the servient estate.

The second assignment of error was likewise properly rejected by the appellate court. Primarily, the issue of legality or illegality of the conversion of the road lot in question has long been laid to rest in LRC Case No. Q-1614[15] which declared with finality the legality of the segregation subdivision survey plan of the disputed road lot. Consequently, it is now too late for petitioners to question the validity of the conversion of the road lot.

Finally, questions relating to non-compliance with the requisites for conversion of subdivision lots are properly cognizable by the National Housing Authority (NHA), now the Housing and Land Use Regulatory Board (HLURB), pursuant to Sec. 22 of PD 957[16] and not by the regular courts. Under the doctrine of primary administrative jurisdiction,[17] where jurisdiction is vested upon an administrative body, no resort to the courts may be made before such administrative body shall have acted upon the matter.

WHEREFORE, Petition is DENIED. The 16 January 1996 Decision and the 14 June 1996 Resolution of the Court of Appeals denying reconsideration thereof are AFFIRMED. Costs against petitioners.

SO ORDERED.

Davide, Jr. (Chairman), Vitug, Panganiban, and Quisumbing, JJ., concur.

[1] Penned by Associate Justice Jesus M. Elbinias and concurred in by Associate Justices Ramon U. Mabutas and Salvador J. Valdez, Jr.

[2] Judge Celia Lipana-Reyes presiding.

[3] Docketed as LRC Case No. Q-1614, "Petition for Issuance of Titles and/or Approval of Segregation Subdivision and Technical Description."

[4] Annex "F" and "F-1;" Rollo, pp. 35-37.

[5] Rollo, pp. 395-401.

[6] Remalante v. Tibe, G.R. No. 59514, 25 February 1988, 158 SCRA 138, citing Chan v. Court of Appeals, No. L-27488, 30 June 1970, 33 SCRA 737.

[7] Santa Ana, Jr. v. Hernandez, No. L-16394, 17 December 1966, 18 SCRA 973.

[8] Uniland Resources v. Development Bank of the Philippines, G.R. No. 95909, 16 August 1991, 200 SCRA 751, 755.

[9] Francisco v. Intermediate Appellate Court, G.R. No. 63996, 15 September 1989, 177 SCRA 527, 533.

[10] Costabella Corporation v. Court of Appeals, G.R. No. 80511, 25 January 1991, 193 SCRA 333, 340.

[11] Tolentino, Commentaries and Jurisprudence on the Civil Code of the Philippines, Vo. II, 1992 Ed., pp. 387-388.

[12] G.R. No. 75905, 12 October 1987, 154 SCRA 703.

[13] G.R. No. 75723, 2 June 1995, 244 SCRA 713.

[14] See Quimen v. Court of Appeals, G.R. No. 112331, 29 May 1996.

[15] See Note 3 and Annex "I;" Rollo, pp. 56-58.

[16] "The Subdivision and Condominium Buyers Protective Decree."

Sec. 22. No owner shall charge or alter roads, open spaces, infrastructures, facilities for public use and/or other form of subdivision developments as contained in the approved subdivision plan and/or represented in its advertisements, without the permission of the Authority and the written conformity or consent of the duly organized homeowners association, or in the absence of the latter, by the majority of the lot buyers in the subdivision.

[17] Brett v. Intermediate Appellate Court, G.R. No. 74223, 27 November 1990, 191 SCRA 687.

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