

**BRYAN U. VILLANUEVA, PETITIONER, VS. HON. TIRSO D.C. VELASCO
IN HIS CAPACITY AS PRESIDING JUDGE OF THE REGIONAL TRIAL
COURT OF QUEZON CITY, BRANCH 88, JULIO N. SEBASTIAN AND
SHIRL...**

G.R. NO. 130845. November 27, 2000

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This petition for certiorari assails (1) the decision[1] dated December 27, 1996 of the Court of Appeals in CA-G.R. SP No. 39166, dismissing petitioner's petition for review under Rule 65 with prayer for the issuance of a cease and desist order and/or temporary restraining order, and (2) the resolution[2] dated August 14, 1997 denying the subsequent motion for reconsideration.

Petitioner Bryan Villanueva is the registered owner of the parcel of land covered by Transfer Certificate of Title No. 127862 of the Register of Deeds of Quezon City. He bought it from Pacific Banking Corporation, the mortgagee of said property. The bank had acquired it from the spouses Maximo and Justina Gabriel at a public auction on March 19, 1983. When petitioner bought the parcel of land there was a small house on its southeastern portion. It occupied one meter of the two-meter wide easement of right of way the Gabriel spouses granted to the Espinolas, predecessors-in-interest of private respondents, in a Contract of Easement of Right of Way. The pertinent portion of the contract dated November 28, 1979, states:

. . . in order to have an access to and from their aforementioned land where their houses are constructed and to have an outlet to Tandang Sora Ave. which is the nearest public road and the least burdensome to the servient estate and to third persons, it would be necessary for them to pass through spouses MAXIMO GABRIEL and JUSTINA CAPUNO's land and for this purpose, a path or passageway of not less than two (2) meters wide of said spouses' property is necessary for the use of ROMEO, RODOLFO, NENITA and AURORA ESPINOLA and for all their needs in entering their property.

x x x

WHEREFORE, in view of the fact that the property of the ESPINOLA had been bought by them from MAXIMO CAPUNO, father of MAXIMO GABRIEL, spouses MAXIMO GABRIEL and JUSTINA CAPUNO hereby agree and permit RODOLFO, ROMEO, NENITA and AURORA ESPINOLA and their families to have a permanent easement of right of way over the aforementioned property of said spouses limited to not more than two meters wide, throughout the whole length of the southeast side of said property and as specifically indicated in the attached plan which is made an integral part of this Contract as Annex "A";

This Agreement shall be binding between the parties and upon their heirs, successors, assigns, without prejudice in cases of sale of subject property that will warrant the circumstances.[3]

Unknown to petitioner, even before he bought the land, the Gabriels had constructed the aforementioned small house that encroached upon the two-meter easement. Petitioner was also unaware that private respondents, Julio

Sebastian and Shirley Lorilla, had filed on May 8, 1991, Civil Case No. Q-91-8703, for easement, damages and with prayer for a writ of preliminary injunction and/or restraining order against the spouses Gabriel.[4] As successors-in-interest, Sebastian and Lorilla wanted to enforce the contract of easement.

On May 15, 1991, the trial court issued a temporary restraining order. On August 13, 1991, it issued a writ of preliminary mandatory injunction ordering the Gabriels to provide the right of way and to demolish the small house encroaching on the easement. On August 15, 1991, the Gabriels filed a motion for reconsideration which was also denied. Thus, they filed a petition for certiorari before the Court of Appeals.

On March 26, 1992, the Eighth Division of the Court of Appeals dismissed the petition and upheld the RTC's issuances. The decision became final and executory on July 31, 1992.[5]

On January 5, 1995, Judge Tirso Velasco of the RTC in Quezon City, Branch 88, issued an Alias Writ of Demolition. On June 20, 1995, the sheriff tried to demolish the small house pursuant to the writ. Petitioner filed a Third Party Claim with Prayer to Quash Alias Writ of Demolition. He maintains that the writ of demolition could not apply to his property since he was not a party to the civil case. His Third Party Claim with prayer to quash the writ of demolition was denied for lack of merit on August 16, 1995.[6] The motion for reconsideration as well as the Supplemental Motion for Reconsideration dated September 12, 1995 were denied on October 19, 1995.[7]

Petitioner, thereafter, filed a petition for certiorari before the Court of Appeals, docketed as CA-G.R. SP No. 39166, asserting that the existence of the easement of right of way was not annotated in his title and that he was not a party to Civil Case No. Q-91-8703, hence the contract of easement executed by the Gabriels in favor of the Espinolans could not be enforced against him. The Court of Appeals dismissed the petition for lack of merit and denied the reconsideration, disposing thus:

WHEREFORE, the instant petition is hereby dismissed by this court for lack of merit.

No costs considering the failure of private respondents to file their comment, despite notice.[8]

Hence, this instant petition.

Petitioner now avers that the appellate court erred in declaring,

(1) THAT FOLLOWING THE ESSENCE OF INHERENCE AND INTRANSMISSIBILITY OF AN EASEMENT, A RIGHT OF WAY CAN EXIST EVEN IF THEY ARE NOT EXPRESSLY STATED OR ANNOTATED ON THE TORRENS TITLE;

(2) THAT PETITIONER, AS PROSPECTIVE BUYER, SHOULD HAVE EXERCISED ORDINARY PRUDENCE BY TAKING THE INITIATIVE TO DETERMINE THAT AN EASEMENT HAS BEEN CONSTITUTED ON THE PROPERTY HE INTENDS TO BUY; AND,

(3) THAT IN AS MUCH AS THE HEREIN PETITIONER IS NOT A PARTY TO CIVIL CASE NO. Q-91-8703, HE CANNOT BE BOUND BY ANY JUDGMENT OR ORDER RENDERED THEREIN.[9]

Primarily, the issue is whether the easement on the property binds petitioner.

Petitioner argues it could not be enforced against him. First, he says that a right of way cannot exist when it is not expressly stated or annotated on the Torrens title. According to him, even if an easement is inherent and inseparable from the estate to which it actively belongs as provided in Art. 617 of the Civil Code,[10] the same is extinguished when the servient estate is registered and the easement was not annotated in said title conformably with Section 39 of the Land Registration Law. Second, petitioner points out that the trial court erred when it faulted him for relying solely on the clean title of the property he bought, as it is well-settled that a person dealing with registered land is not required to go beyond what is recorded in the title. He adds that it is private

respondents who should have made sure their right of way was safeguarded by having the same annotated on the title with the Register of Deeds. He adds that Section 76 of P.D. No. 1529[11] also requires that when a case is commenced involving any right to registered land under the Land Registration Law (now the Property Registration Decree), any decision on it will only be effectual between or among the parties thereto, unless a notice of lis pendens of such action is filed and registered in the registry office where the land is recorded. There was no such annotation in the title of the disputed land, according to petitioner. Lastly, since he was not a party to Civil Case No. Q-91-8703, petitioner argues that he cannot be bound by the writ of demolition and be forcibly divested of a portion of his land without having his day in court.

Private respondents Sebastian and Lorilla, for their part, adopted the disquisition of the appellate court as their Comment and asked for the dismissal of the petition and P100,000.00 in damages. In its decision the appellate court, citing the decision of the lower court, stressed that unlike other types of encumbrance of real property, a servitude like a right of way can exist even if they are not expressly stated or annotated as an encumbrance in a Torrens title because servitudes are inseparable from the estates to which they actively or passively belong. Moreover, Villanueva was bound by the contract of easement, not only as a voluntary easement but as a legal easement. A legal easement is mandated by law, and continues to exist unless its removal is provided for in a title of conveyance or the sign of the easement is removed before the execution of the conveyance conformably with Article 649[12] in accordance with Article 617[13] of the Civil Code.

At the outset, we note that the subject easement (right of way) originally was voluntarily constituted by agreement between the Gabriels and the Espinolas. But as correctly observed by the Court of Appeals, the easement in the instant petition is both (1) an easement by grant or a voluntary easement, and (2) an easement by necessity or a legal easement. A legal easement is one mandated by law, constituted for public use or for private interest, and becomes a continuing property right.[14] As a compulsory easement, it is inseparable from the estate to which it belongs, as provided for in said Article 617 of the Civil Code. The essential requisites for an easement to be compulsory are: (1) the dominant estate is surrounded by other immovables and has no adequate outlet to a public highway; (2) proper indemnity has been paid; (3) the isolation was not due to acts of the proprietor of the dominant estate; (4) the right of way claimed is at a point least prejudicial to the servient estate; and (5) to the extent consistent with the foregoing rule, where the distance from the dominant estate to a public highway may be the shortest.[15] The trial court and the Court of Appeals have declared the existence of said easement (right of way). This finding of fact of both courts below is conclusive on this Court,[16] hence we see no need to further review, but only to re-affirm, this finding. The small house occupying one meter of the two-meter wide easement obstructs the entry of private respondents' cement mixer and motor vehicle. One meter is insufficient for the needs of private respondents. It is well-settled that the needs of the dominant estate determine the width of the easement.[17] Conformably then, petitioner ought to demolish whatever edifice obstructs the easement in view of the needs of private respondents' estate.

Petitioner's second proposition, that he is not bound by the contract of easement because the same was not annotated in the title and that a notice of lis pendens of the complaint to enforce the easement was not recorded with the Register of Deeds, is obviously unmeritorious. As already explained, it is in the nature of legal easement that the servient estate (of petitioner) is legally bound to provide the dominant estate (of private respondents in this case) ingress from and egress to the public highway.

Petitioner's last argument that he was not a party to Civil Case No. Q-91-8703 and that he had not been given his day in court, is also without merit. Rule 39, Sec. 47, of the Revised Rules of Court:

SEC. 47. Effect of judgments or final orders. - The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows:

(a) In case of a judgment or final order against a specific thing, or in respect to the probate of a will, or the administration of the estate of a deceased person, or in respect to the personal, political, or legal condition or status of a particular person or his relationship to another, the judgment or final order is conclusive upon the title to the thing, the will or administration, or the condition, status or relationship of the person; however, the probate of a will or granting of letters of administration shall only be prima facie evidence of the death of the testator or intestate;

(b) In other cases, the judgment or final order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity; and

(c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto. (Emphasis ours).

Simply stated, a decision in a case is conclusive and binding upon the parties to said case and those who are their successor in interest by title after said case has been commenced or filed in court.[18] In this case, private respondents, Julio Sebastian and Shirley Lorilla, initiated Civil Case No. Q-91-8703 on May 8, 1991,[19] against the original owners, the spouses Maximo and Justina Gabriel. Title in the name of petitioner was entered in the Register of Deeds[20] on March 24, 1995, after he bought the property from the bank which had acquired it from the Gabriels. Hence, the decision in Civil Case No. Q-91-8703 binds petitioner. For, although not a party to the suit, he is a successor-in-interest by title subsequent to the commencement of the action in court.

WHEREFORE, the instant petition is DENIED. The assailed decision and resolution of the Court of Appeals are AFFIRMED. Costs against petitioner.

SO ORDERED.

Bellosillo (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

[1] Rollo, pp. 33-39.

[2] Id. at 40.

[3] CA Rollo, p. 55.

[4] Id. at 43.

[5] CA Records, pp. 80-91.

[6] Id. at 36.

[7] Id. at 38-39.

[8] Rollo, p. 38.

[9] Id. at 20, 24 and 26.

[10] Art. 617. Easements are inseparable from the estate to which they actively or passively belong.

[11] Section 76. Notice of lis pendens. No action to recover possession of real estate, or to quiet title thereto, or to remove clouds upon the title thereof, or for partition, or other proceedings of any kind in court directly affecting the title to land or the use or occupation thereof or the building thereon, and no judgment, and no proceeding to

vacate or reverse any judgment, have any effect upon registered land as against persons other than the parties thereto, unless a memorandum or notice stating the institution of such action or proceedings and the court wherein the same is pending, as well as the date of the institution thereof, together with a reference to the number of the certificate of title, and the adequate description of the land affected and the registered owner thereof, shall have been filed and registered.

[12] Art. 649. 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 cause to the servient estate.

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.

[13] Supra, note 6.

[14] *Benedicto vs. Court of Appeals*, 25 SCRA 145, 153 (1968). Citing *Valicenti v. Schultz*, 209 N.Y.S. 2d 33 (1960).

[15] *Cristobal vs. Court of Appeals*, 291 SCRA 122, 129 (1998).

[16] *Villanueva vs. Court of Appeals*, 294 SCRA 90, 92-93 (1998).

[17] *Sta. Maria vs. Court of Appeals*, 285, SCRA 351, 362 (1998).

[18] *Ayala Corporation vs. Ray Burton Development Corporation*, 294 SCRA 48, 65 (1998).

[19] CA Rollo, p. 43.

[20] *Id.* at 40.

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