

## JUAN GARGANTOS, PETITIONER, VS. TAN YANON AND THE COURT OF APPEALS, RESPONDENTS.

*G.R. No. 14652. June 30, 1960*

Ponente: GUTIERREZ DAVID, J.

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### GUTIERREZ DAVID, J.:

Juan Gargantos appeals by certiorari from the decision of the Court of Appeals reversing the judgment of the Court of First Instance of Romblon.

The record discloses that the late Francisco Sanz was the former owner of a parcel of land containing 888 square meters, with the buildings and improvements thereon, situated in the poblacion of Romblon. He subdivided the lot into three and then sold each portion to different persons. One portion was purchased by Guillermo Tengtio who subsequently sold it to Vicente Uy Veza. Another portion, with the house of strong materials thereon, was sold in 1927 to Tan Yanon, respondent herein. This house has on its northeastern side, doors and windows overlooking the third-portion, which, together with the camarin and small building thereon, after passing through several hands, was finally acquired by Juan Gargantos, petitioner herein.

On April 23, 1955, Gargantos applied to the Municipal Mayor of Romblon for a permit to demolish the roofing of the old camarin. The permit having been granted, Gargantos tore down the roof of the camarin. On May 11, 1955, Gargantos asked the Municipal Council of Romblon for another permit, this time in order to construct a combined residential house and warehouse on his lot. Tan Yanon opposed approval of this application.

Because both the provincial fiscal and district engineer of Romblon recommended granting of the building permit to Gargantos, Tan Yanon filed against Gargantos an action to restrain him from constructing a building that would prevent plaintiff from receiving light and enjoying the view through the windows of his house, unless such building is erected at a distance of not less than three meters from the boundary line between the lots of plaintiff and defendant, and to enjoin the members of the Municipal Council of Romblon from issuing the corresponding building permit to defendants. The case as against the members of the Municipal Council was subsequently dismissed with concurrence of plaintiff's council. After trial, the Court of First Instance of Romblon rendered judgment dismissing the complaint and ordering plaintiff, to pay defendant the sum of P12,500.00 by way of compensatory, exemplary, moral and moderate damages.

On appeal, the Court of Appeals set aside the decision of the Court of First Instance of Romblon and enjoined defendant from constructing his building unless "he erects the same at a distance of not less than three meters from the boundary line of his property, in conformity with Article 673 of the New Civil Code."

So Juan Gargantos filed this petition for review of the appellate Court's decision. The focal issue herein is whether the property of respondent Tan Yanon has an easement of light and view against the property of petitioner Gargantos.

The kernel of petitioner's argument is that respondent never acquired any easement either by title or by

prescription. Assuredly, there is no deed establishing an easement. Likewise, neither petitioner nor his predecessors-in-interest have ever executed any deed whereby they recognized the existence of the easement, nor has there been final judgment to that effect. Invoking our decision in *Cortes vs. Yu-Tibo* (2 Phil., 24), petitioner maintains that respondent has not acquired an easement by prescription because he has never formally forbidden petitioner from performing any act which would be lawful without the easement, hence the prescriptive period never started.

It is obvious, however, that Article 538, O.C.C. (now Article 621, N.C.C.) and the doctrine in the *Yu-Tibo* case are not applicable herein because the two estates, that now owned by petitioner, and that owned by respondent, were formerly owned by just one person, Francisco Sanz. It was Sanz who introduced improvements on both properties. On that portion presently belonging to respondent, he constructed a house in such a way that the northeastern side thereof extends to the wall of the camarin on the portion now belonging to petitioner. On said northeastern side of the house, there are windows and doors which serve as passages for light and view. These windows and doors were in existence when respondent purchased the house and lot from Sanz. The deed of sale did not provide that the easement of light and view would not be established. This then is precisely the case covered by Article 541, O.C.C. (now Article 624, N.C.C.) which provides that the existence of an apparent sign of easement between two estates, established by the proprietor of both, shall be considered, if one of them is alienated, as a title so that the easement will continue actively and passively, unless at the time the ownership of the two estates is divided, the contrary is stated in the deed of alienation of either of them, or the sign is made to disappear before the instrument is executed. The existence of the doors and windows on the northeastern side of the aforementioned house, is equivalent to a title, for the visible and permanent sign of an easement is the title that characterizes its existence (*Amor vs. Florentino*, 74 Phil., 403). It should be noted, however, that while the law declares that the easement is to "continue" the easement actually arises for the first time only upon alienation of either estate, inasmuch as before that time there is no easement to speak of, there being but one owner of both estates (Article 530, O.C.C., now Article 613, N.C.C.).

We find that respondent Tan Yanon's property has an easement of light and view against petitioner's property. By reason of this easement, petitioner cannot construct on his land any building unless he erects it at a distance of not less than three meters from the boundary line separating the two estates.

Wherefore, the appealed decision is hereby affirmed with costs against petitioner.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., and Barrera, JJ., concur.

Padilla, J., took no part.

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