

**SPOUSES RAMON AND FELICISIMA DIOSO, PETITIONERS, VS.
SPOUSES TOMAS AND LEONORA CARDEÑO, RESPONDENTS.***G.R. No. 150155. September 01, 2004*

Ponente: CALLEJO, SR., J.

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Before us is a petition for review on certiorari filed by the Spouses Ramon and Felicisima Dioso, seeking the reversal of the Court of Appeals' Resolution[1] dated September 28, 2001 in CA-G.R. CV No. 63265, denying their motion for reconsideration/new trial. In the assailed resolution, the appellate court, likewise, reiterated its Decision dated May 9, 2001 substantially affirming the decision of the Regional Trial Court (RTC) of San Pedro, Laguna, Branch 31, dismissing the petitioners' complaint for specific performance and/or easement of right of way.

The factual antecedents of the case are as follows:

Lot 248-A, the property subject of the complaint for specific performance and/or easement of right of way, is one of three sublots of Lot 248 located along F. Gomez St., Sta. Rosa, Laguna. Lot 248-A has a total area of 222 square meters and was originally owned by Magno Eraña, the father of petitioner Felicisima Eraña Dioso, respondent Leonora Eraña Cardeño and their other sisters, namely, Natividad, Julieta and Encarnacion. Upon Magno Eraña's death, Lot 248-A was adjudicated in favor of respondent Leonora Eraña Cardeño, et al.[2]

Lot 248-A was later on partitioned into two, whereby the outer portion along F. Gomez St. became the property of the respondents, Spouses Tomas and Leonora Eraña Cardeño. The respondents built a house thereon sometime in 1972. The interior portion of Lot 248-A became the property of Encarnacion Eraña Javel (now deceased), one of the sisters of respondent Leonora Cardeño and petitioner Felicisima Dioso. Subsequently, Encarnacion sold her portion to Felicidad Legaspi who, in turn, sold the same to the petitioners, Spouses Ramon and Felicisima Dioso.

The petitioners had also built a house of light materials on the adjacent land, Lot 248-B, then owned by Frisco Eraña. There is an existing pathway or alley on this lot which the petitioners use as their outlet to F. Gomez St. After they bought Encarnacion's property, the petitioners wanted to construct a new house at the interior portion of Lot 248-A. They then demanded that they be given a right of way or an outlet to F. Gomez St., claiming that they were entitled thereto under the Pinanumpaang Salaysay executed between respondent Leonora Cardeño and Encarnacion Javel, the petitioners' predecessor-in-interest, on May 29, 1977. The said document states in part:

Na, kami ang siyang nagmamay-ari ng loteng may numirong 248-A na may sukat [na] 222 square meters. Na, ang nasabing lote ay nasa tabi ng kamalig ni G. AVEL SILVA sa daang Gov. F. Gomez ng bayang ito;

Na, ako (ENCARNACION E. JAVEL) ay pumapayag na ang nasabing lote ay hatiin at ang harapan ng nasabing lote ay pinaubaya ko na sa aking kapatid na si LEONORA E. CARDEÑO at ang likuran ng lote ay sa akin;

Na, ako (LEONORA E. CARDEÑO) bilang pagbibigay sa akin ng aking kapatid (ENCARNACION E.

JAVEL) na mapunta sa akin ang harapan ng nasabing lote ay binibigyan ko naman ng daang tao sa tagiliran nitong lote upang madaanan ng aking kapatid patungo sa likuran ng nasabing lote na kanyang kaparte;

Dahil sa ako (LEONORA E. CARDEÑO) ay walang kaukulang salapi para mabili ang kaparti ng aking kapatid na si ENCARNACION E. JAVEL sa nasabing lote ay binibigyan ko siya (ENCARNACION E. JAVEL) ng karapatan na maipagbili niya ang kanyang kaparti ng nasabing lote na may numirong 248-A na may sukat na 111 square meters.[3]

When the respondents refused to give them the right of way, the petitioners filed with the RTC of San Pedro, Laguna, Branch 31, a complaint for specific performance and/or easement of right of way with damages, docketed as Civil Case No. B-4515. The petitioners prayed that the respondents be directed to comply with or perform their obligation under the Pinanumpaang Salaysay and grant the petitioners a right of way, and to pay them damages.

In their answer to the complaint, the respondents specifically denied the genuineness and due execution of the Pinanumpaang Salaysay, alleging that it was falsified. According to the respondents, respondent Leonora Cardeño and Encarnacion Javel could not have claimed co-ownership over Lot 248-A to the exclusion of their other siblings as early as 1977 when the Pinanumpaang Salaysay was supposedly executed, because it was only on August 27, 1992 that the other siblings waived or renounced their shares over the said property in favor of respondent Leonora Cardeño and Encarnacion Javel. The respondents, thus, urged the trial court to dismiss the complaint.

After due proceedings, the trial court rendered its Decision[4] dated April 23, 1999 and ruled in favor of the respondents. The trial court held that the petitioners' evidence did not support their claim that respondent Leonora Cardeño and Encarnacion Javel executed the Pinanumpaang Salaysay or entered into an agreement granting the latter, the petitioners' predecessor-in-interest, a right of way. The trial court noted that the petitioners presented only a photocopy or machine copy of the purported document, and, during the trial, failed to lay the foundation or prepare the basis for the admission of secondary evidence to prove the contents thereof. Moreover, according to the trial court, even on the assumption that a voluntary easement of right of way existed on the respondents' property, the petitioners were obliged to pay them indemnity therefor. Since the petitioners were not willing to pay such indemnity, the trial court concluded that their action to compel the respondents to grant them a right of way must fail. The trial court, thus, dismissed the complaint and ordered the petitioners to pay the respondents the sum of P30,000 as attorney's fees.

Aggrieved, the petitioners elevated the case to the Court of Appeals (CA). After evaluation of the respective pleadings filed by the parties and the evidence on record, the CA rendered the Decision[5] dated May 9, 2001 substantially affirming that of the trial court's. The appellate court, however, deleted the attorney's fees awarded in favor of the respondents for lack of factual and legal justification.

Citing Section 3,[6] Rule 130 of the Rules of Court, the CA opined that the best evidence of the contents of a document is the original document itself; in the absence of a clear showing that the original writing has been lost or destroyed or cannot be produced in court, the photocopy submitted, in lieu thereof, must be disregarded, being unworthy of any probative value and being inadmissible in evidence.

The appellate court further cited Section 5[7] of the same Rule and observed that the petitioners failed to show proof as to the reasons for the unavailability of the original copy of the Pinanumpaang Salaysay. The petitioners' witness, Veneranda Legaspi, merely testified that she did not know why only a photocopy of the said document was given to her by her mother, Felicidad Legaspi, from whom the petitioners acquired the interior one-half portion of Lot 248-A.

The CA thus affirmed the finding of the RTC that the petitioners' claim of a right of way had no legal basis, in

view of their failure to prove the due execution of the Pinanumpaang Salaysay under which respondent Leonora Cardeño allegedly granted a right of way in favor of the petitioners' predecessor-in-interest. Moreover, by the petitioners' refusal to pay indemnity to the respondents, the latter could not be compelled to grant them the voluntary easement of right of way. The dispositive portion of the appellate court's decision reads:

WHEREFORE, foregoing premises considered and pursuant to applicable jurisprudence and law on the matter, the decision dated April 23, 1999 of the court a quo is AFFIRMED with modification. The award of damages and attorney's fees is deleted. No costs.

SO ORDERED.[8]

Thereafter, the petitioners filed with the appellate court a motion for reconsideration/new trial, alleging that it erred in adopting the factual findings of the court a quo. According to the petitioners, the CA should have made its own findings of facts. The petitioners, likewise, submitted to the appellate court Tax Declaration No. 51637 for the year 1992 covering Lot 248-A in the name of respondent Leonora Cardeño where, at the dorsal portion thereof, the following annotation was written:

Revision of T.D. No. 15976 based in PINANUMPAANG SALAYSAY NG PAGHAHATI – pagbabahaging labas sa hukuman na may pagtalikod sa kabahagi.[9]

The petitioners alleged that this document was newly discovered evidence, the consideration of which could alter the outcome of the case. They also averred that the document proved the existence of the Pinanumpaang Salaysay. In their supplement to the motion for new trial, the petitioners additionally submitted a photocopy of the Pinanumpaang Salaysay, this time certified by the Municipal Assessor of Sta. Rosa, Laguna as having been verified with the original document kept by Encarnacion Javel. The Municipal Assessor, likewise, certified that the Pinanumpaang Salaysay had been presented to the Office of the Municipal Assessor in connection with the issuance of respondent Leonora Cardeño's Tax Declaration Nos. 51637 and 51638 covering Lot 248-A. Also submitted by the petitioners was the affidavit of Magtanggol Yldeso, one of the witnesses to the Pinanumpaang Salaysay, attesting to the circumstances surrounding its execution and identifying the signatures appearing thereon.

However, in the assailed Resolution of September 28, 2001, the appellate court denied the petitioners' motion for reconsideration/new trial. In so ruling, the CA reasoned that the documents proffered by the petitioners, i.e., Tax Declaration No. 51637, Yldeso's affidavit and the Municipal Assessor's certification, could not be considered as newly discovered evidence. According to the CA, had the petitioners exercised due diligence in securing these documents, they could have easily been made available at the time of the filing of the complaint or even before the case was elevated to it. The dispositive portion of the assailed CA resolution reads:

WHEREFORE, premises above considered, the motion for reconsideration/new trial is hereby DENIED and our May 9, 2001 Decision is REITERATED and AFFIRMED.

SO ORDERED.[10]

The petitioners now seek relief from this Court, alleging that the appellate court erred in denying their motion for reconsideration/new trial. They maintain that the CA should have admitted in evidence the photocopy of the Pinanumpaang Salaysay which was duly certified by the Municipal Assessor of Sta. Rosa as a faithful reproduction of the original document. After all, according to the petitioners, this document merely confirms the existence and due execution of the Pinanumpaang Salaysay, a photocopy of which was already made part of the records of the proceedings in the trial court.

According to the petitioners, the fact that respondent Leonora Cardeño's 1992 Tax Declaration which contained

the annotation on the existence of the Pinanumpaang Salaysay was not presented as evidence during trial was excusable negligence on the part of their former counsel. The petitioners pray that this omission be excused and that they not be held bound thereby. Finally, the petitioners insist that they were able to establish by secondary evidence during trial the existence of the Pinanumpaang Salaysay and the fact of its loss or unavailability.

The preliminary issue that needs to be resolved by this Court is whether the appellate court committed a reversible error in denying the petitioners' motion for reconsideration/new trial.

On this score, we affirm the ruling of the Court of Appeals.

For newly-discovered evidence to be a ground for new trial, the concurrence of the following requisites must be established: (a) the evidence is discovered after trial; (b) the evidence could not have been discovered and produced during trial even with the exercise of reasonable diligence; and (c) the evidence is material and not merely corroborative, cumulative or impeaching and is of such weight that if admitted, would probably change the judgment.[11] In order that a particular piece of evidence may be regarded as "newly discovered" for purposes of granting a new trial, it is essential to show that the offering party exercised reasonable diligence in seeking to locate such evidence before or during trial, but had nonetheless failed to secure it.[12]

The newly discovered evidence submitted by the petitioners to the CA does not satisfy the foregoing requisites. Respondent Leonora Cardeño's 1992 Tax Declaration already existed long before the petitioners filed their complaint in 1997. It must be stressed that the said tax declaration is a public document, and as such, the petitioners could have easily obtained a copy of the same and presented it during trial. The same holds true for the copy of the Pinanumpaang Salaysay which was certified by the Municipal Assessor of Sta. Rosa as a faithful reproduction of the original document kept by Encarnacion Javel.

Thus, the petitioners failed to establish the second requisite of the rule on newly discovered evidence. The documents belatedly submitted to the appellate court were already in existence at the time of trial. Had they exercised reasonable diligence, the petitioners could have discovered them and produced them during trial. Instead, they attribute the omission to the mistake or excusable negligence of their former counsel. Unfortunately for the petitioners, clients are generally bound by the mistakes, negligence and omission of their counsel.[13]

The petitioners argue that they were able to establish the existence of the Pinanumpaang Salaysay by secondary evidence, and the fact of the loss or unavailability of the original copy thereof despite the non-admission of the copy certified by the municipal assessor.

Anent this issue, we rule in favor of the petitioners.

Section 3,[14] Rule 130 of the Rules of Court, indeed, provides that when the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself. This rule, however, admits of exceptions, as Section 5 thereof further states that "[W]hen the original document has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by a copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated."

The admission of secondary evidence in case of the loss or unavailability of the original document is thus warranted upon satisfactory proof of the following: (1) execution or existence of the original; (2) loss and destruction of the original or its non-production in court; and (3) unavailability of the original is not due to bad faith on the part of the offeror.[15] Proof of the due execution of the document and its subsequent loss would constitute the foundation for the introduction of secondary evidence.[16]

Admittedly, in this case, the original document of the Pinanumpaang Salaysay was not presented during trial. However, the petitioners presented a photocopy thereof, as well as testimonial evidence to prove its due execution and the loss or unavailability of the original document. Specifically, the existence and due execution of the Pinanumpaang Salaysay was established by Yldeso, one of the petitioners' witnesses, who testified that he was one of the witnesses to the execution thereof and that his signature appears thereon:

Q

Mr. Witness, on May 29, 1977, do you recall if you reported for duty?

A

Yes, Sir.

Q

Where did you report for duty on that day?

A

Police Department of Sta. Rosa, Laguna then I went to the Office of the Mayor as security, Sir.

Q

Are you telling us that as a policeman you were likewise detailed as security of the mayor?

A

Yes, Sir, on that day.

Q

Who was the mayor that you are referring to?

A

Mayor Angel Tiongco, Sir.

Q

He was then at that time Mayor of Sta. Rosa?

A

You said that you reported on May 29, 1977 and you went to the office of the mayor as part of your additional job as a policeman, do you recall anything unusual that happened on that day, if you recall?

ATTY. ZARATE:

The question is very general.

COURT:

Let us see.

A

Yes, Sir.

COURT:

What is that unusual incident?

A

The family of Encarnacion went to me at my office at the police department, Sir.

Q

Do you consider that as [an] unusual incident?

A

Yes, Ma'am. That is an unusual incident event (sic) because my grandmother who is their Aunt told me that they will come and see (sic), Ma'am.

Q

When you said they, you are referring to whom?

A

Leonora Eraña and Encarnacion Eraña, Ma'am.

Q

So you considered that as unusual?

A

Yes, Ma'am.

ATTY. FUENTES:

Who is that godmother that you are referring to?

A

Felicidad Eraña, Sir.

Q

Did your godmother Felicidad tell you that the Eraña sisters is (sic) going to see you at that time?

A

Yes, Sir, that is why I considered that as [an] unusual event.

Q

And what was the purpose if Felicidad told you in coming (sic) the Eraña sisters?

A

To prepare the Deed of Sale and the right of way which is located at the back, Sir.

COURT:

At the back of what?

A

At the back of Leonora (sic), Ma'am.

ATTY. FUENTES:

Did, in fact, the Eraña sisters (sic) see you on that day?

A

Yes, Sir, they went there and that they had caused the preparation of [the] Sinumpaang (sic) Salaysay relative to their agreement.

Q

You mentioned the name of Leonora Eraña, do you know her?

A

Yes, Sir.

Q

If she is in court, will you please point to her?

A

(Witness pointing to a woman inside the courtroom who when asked his (sic) name identified her name (sic) as Leonora Eraña Cardeno).

Q

You likewise mentioned the name Encarnacion Eraña?

A

Yes, Sir.

Q

Please look around the courtroom and point to us if she is around?

A

What I know [is that] she is already dead, Sir.

Q

What was the request made to you by your godmother if any why the Eraña sisters wanted to see you on that day?

A

They asked me and told me that they are going to prepare a Sinumpaang (sic) Salaysay relative to their agreement, Sir.

Q

Did your godmother tell you who were these sisters who were supposed to prepare that document?

A

Yes, Sir. Leonora and Encarnacion.

Q

Do you know, if indeed, that document was prepared?

A

Yes, Sir.

Q

Do you know the reason why you were requested to be around in the preparation of that document?

A

My godmother asked me to accompany then (sic) that is (sic) the reason why I accompany (sic) them, Sir.

Q

To where did you accompany them?

A

To the Office of the Mayor, Sir.

Q

And you are referring to Mayor Tiongco?

A

Yes, Sir.

Q

What happened to the office of the mayor?

A

The document was prepared which was signed by them in my presence, in fact, I was a witness on that and I also signed the document, Sir.

Q

Your (sic) claimed Mr. witness that you are a witness to that document, if that document will be shown to you, will you be able to identify it?

A

If my name is there I would be able to identify it, Sir.

COURT:

Show the document.

ATTY. FUENTES:

I am showing to you Mr. Yldeso a Sinumpaang (sic) Salaysay dated May 29, 1977 previously marked as Exhibit A, please go over and tell us if this is the document you are referring to?

ATTY. ZARATE:

The witness will be incompetent, the document be[ing] presented is [a] different document being a xerox copy.

ATTY. FUENTES:

This is a xerox copy, we admit that, Your Honor, but we are presenting that as a secondary evidence.

ATTY. ZARATE:

Therefore, the question has no basis.

ATTY. FUENTES:

Yes, Your Honor, but the second witness we presented, it was explained.

COURT:

Well, anyway, that is not being offered yet, you just make an objection.

ATTY. ZARATE:

Yes, but we have an objection that the witness is incompetent in any identity (sic) as to the signature would case (sic) only a suggestive device for him to identify.

COURT:

Subject to that observation. Answer.

A

Yes, Sir.

ATTY. FUENTES:

You mentioned that you have your signature in this document, can you point in this Pinanumpaang Salaysay?

ATTY. ZARATE:

General and continuing objection, Your Honor.

A

(Witness is pointing to a signature below the typewritten word Nilagdaan which [is] marked as Exhibit A for the plaintiff[s], xerox copy of Pinanumpaang Salaysay).

ATTY. FUENTES:

When this document was prepared, do you recall if the parties therein signed or affixed their signature[s]?

A

Yes, Sir.

Q

When you said yes, which parties you are (sic) referring to who signed this document?

A

Encarnacion Eraña and Leonora Eraña, Sir.

Q

I am showing to you a signature over the typewritten name Encarnacion Eraña Javel, tell us if that is the signature of Encarnacion Eraña Javel?

A

Yes, Sir. They signed this in my presence but I am not ascertain (sic) if this is the way they signed but it was in my presence.

Q

Likewise, over the typewritten name Leonora Cardeño is a signature, do you know whose signature is that?

A

Yes, Sir. This is the signature of Leonora Cardeño.

Q

Why do you know that this is her signature or Leonora (sic)?

A

She signed in my presence, Sir.

Q

Aside from you, do you recall if there are other witness who was called to be a witness?

A

Yes, Sir.

Q

Who is the other witness?

A

Tomas Cardeño, Sir.

Q

Did you see Tomas Cardeño affix his signature in that document?

A

After I signed he signed, Sir.

Q

I am showing to you a signature, under your oath will you tell us if this is the signature of Tomas Cardeño?

A

Yes, Sir.

Q

Can you tell us Mr. witness, where was this document executed?

A

They signed that before Mayor Tiongco, Sir.

Q

Do you know if Mayor Tiongco affix (sic) his signature in this document?

A

Yes, Sir, that is why a copy was given to them.

Q

Given copy to whom?

A

To Leonora and Encarnacion, Sir.

Q

Who gave Leonora and Encarnacion?

A

The document was given to me by the Mayor and it was distributed to the parties, Sir.

Q

Why did you give copies to them, to Leonora and Encarnacion?

A

Because they were the one[s] who executed that, so they have to receive a copy, Sir.

Q

Do you recall if Mayor Tiongco at that time subscribed or sign (sic) the document?

A

Yes, Sir.

Q

Do you know where Mayor Tiongco affix (sic) his signature?

A

Yes, Sir.

Q

Can you point?

A

(Witness pointing to a bottom part of this Exhibit A which is not legible.)

ATTY. FUENTES:

At this point, Your Honor, we request that this document be marked, the signatures of the witnesses, Encarnacion Javel, Leonora Cardeño, Tomas Cardeño and that of the mayor be marked as Exhibits "A-1," "A-2," "A-3," "A-4" and "A-5."

Q

When you said Mr. witness that one of the signatory (sic) is Tomas Cardeño, do you know him personally?

A

Yes, Sir.

Q

If he is inside the courtroom, will you please point to him?

A

(Witness pointing to a man who when asked identified himself as Tomas Pablo Cardeño).

ATTY. FUENTES:

That would be all for the witness, Your Honor.[17]

Moreover, the unavailability of the original document was established by Veneranda Legaspi, daughter of Felicidad Legaspi, who bought Encarnacion Eraña's portion of Lot 248-A and eventually sold it to the petitioners. She testified that they exerted efforts to locate the original Pinanumpaang Salaysay, to no avail:

ATTY. FUENTES:

This is a certified xerox copy, can you tell us where is the original or duplicate original of this document?

A

We have exerted effort to locate the original but this is the only copy given to me by my mother, the xerox copy, Sir.

Q

Are you telling us that the one that was given to you by your mother is a xerox copy already?

A

Yes, Sir.

Q

Did you not ask why that is a xerox copy?

A

No, Sir.

Q

And that same xerox copy that you turn over (sic) Mrs. Dioso when you sold the property?

A

Yes, Sir.

Q

Did not Mrs. Dioso ask you why you turn-over (sic) this Pinanumpaang Salaysay to her? Why this is only a xerox copy?

ATTY. ZARATE:

Asking for opinion, Your Honor.

COURT:

Reform.

ATTY. FUENTES:

What was the reaction of Mrs. Dioso when you turn over (sic) to her this document?

A

She asked me about the original but I told her I do not know, Sir.[18]

Further, the Deed of Absolute Sale dated August 13, 1984, executed between Encarnacion Eraña Javel and Felicidad Eraña Legaspi, covering the former's portion of Lot 248-A, Annex "B" for the petitioners and admitted in evidence by the trial court, expressly mentioned the Pinanumpaang Salaysay, to wit:

That my co-owner LEONORA ERAÑA-CARDEÑO being unable to buy my aliquot share of the said property and having authorized me to sell the same to my aunt FELICIDAD ERAÑA-LEGASPI as per written affidavit executed by me and the said Leonora Eraña-Cardeno on May 29, 1977 at Sta. Rosa, Laguna, subscribed before the Municipal Mayor Angel Z. Tiongco; NOW, THEREFORE, for and in consideration of the sum of TEN THOUSAND PESOS (P10,000.) I do hereby sell, transfer and convey in a manner absolute my share of the above-described property which is One Hundred Eleven (111) square meters, more or less in the manner of partition illustrated in the said affidavit annexed hereto forming part and parcel of this deed to be known as Annex "A"; to FELICIDAD ERAÑA-LEGASPI, her heirs, successors-in-interest and assigns.[19]

Clearly then, since there was proof of the due execution of the Pinanumpaang Salaysay, and that, despite earnest efforts on their part, the petitioners could not produce the original thereof, the presentation of secondary evidence to prove the contents of the said document was justified. Furthermore, contrary to the trial court's findings, the petitioners had sufficiently laid down the basis for the introduction of secondary evidence.

The rule on the admission of secondary evidence provides that the contents of the original document may be proved (1) by a copy; (2) by a recital of its contents in some authentic document; or (3) by the recollection of the witnesses, in the order stated.[20] The trial court and the CA, therefore, erred in denying the admission of a photocopy of the Pinanumpaang Salaysay,[21] when the same may be properly considered as secondary evidence to prove the contents thereof.

Interestingly, except for the perfunctory denial of the due execution of the Pinanumpaang Salaysay contained in their answer to the complaint, the respondents never categorically denied the existence or the presence of their signatures thereon when they took the witness stand. In fact, when the petitioners filed their motion for reconsideration/new trial with the CA, submitting therewith a copy of the Pinanumpaang Salaysay, certified by the Municipal Assessor of Sta. Rosa as a faithful reproduction of the original document kept by Encarnacion Javel, the respondents did not refute the same. Even in their comment and memorandum filed with this Court, the respondents did not categorically deny the existence and execution of the said document. To the Court's mind, this is an indication of the genuineness of the Pinanumpaang Salaysay.

Having established the existence and due execution of the Pinanumpaang Salaysay, the respondents are obliged to grant the petitioners, as successors-in-interest of Encarnacion Eraña Javel, a right of way in accordance with the terms thereof.[22]

WHEREFORE, the petition is GRANTED. The assailed CA Decision dated May 9, 2001 and Resolution dated September 28, 2001 in CA-G.R. CV No. 63265 are REVERSED and SET ASIDE. The respondents, Spouses Tomas and Leonora Cardeno, are DIRECTED to grant the petitioners, Spouses Ramon and Felicisima Dioso, an easement of right of way in accordance with the Pinanumpaang Salaysay dated May 29, 1977.

SO ORDERED.

Chico-Nazario, J., concur.

Puno J., on official leave.

Austria-Martinez J., no part.

Tinga J., see separate opinion.

[1] Penned by Associate Justice Jose L. Sabio, Jr., with Associate Justices Ma. Alicia Austria-Martinez (now Associate Justice of the Supreme Court) and Hilarion L. Aquino, concurring.

[2] Records, p. 400.

[3] Id. at 5.

[4] Id. at 441-445.

[5] Rollo, pp. 44-51.

[6] Ibid.

[7] SECTION 5, RULE 130 – When the original document is unavailable. – When the original document has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by a copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated.

[8] Rollo, p. 50.

[9] CA Rollo, p. 101.

[10] Rollo, p. 29.

[11] Bernaldez v. Francia, 398 SCRA 488 (2003).

[12] Ibid.

[13] Jose v. Court of Appeals, 399 SCRA 83 (2003).

[14] Section 3, Rule 130 of the Rules of Court reads:

Sec. 3. Original document must be produced; exceptions. – When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:

(a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;

(b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;

(c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole;

and

(d) When the original is a public record in the custody of a public officer or is recorded in a public office.

[15] Santos v. Court of Appeals, 368 SCRA 91 (2001).

[16] Ibid.

[17] TSN, 19 October 1996, pp. 4-11.

[18] TSN, 12 September 1996, pp. 16-17.

[19] Records, p. 6.

[20] Section 5, Rule 130 of the Rules of Court. (Underscoring ours.)

[21] Annex "A," Records, p. 5.

[22] Art. 619. Easements are established either by law or by the will of the owners. The former are called legal and the latter voluntary easements.

Art. 652. Whenever a piece of land acquired by sale, exchange or partition, is surrounded by other estates of the vendor, exchanger, or co-owner, he shall be obliged to grant a right of way without indemnity.

In case of a simple donation, the donor shall be indemnified by the donee for the establishment of the right of way.

Art. 653. In the case of the preceding article, if it is the land of the grantor that becomes isolated, he may demand a right of way after paying an indemnity. However, the donor shall not be liable for indemnity .

SEPARATE OPINION

TINGA, J.:

I concur with the conclusion reached by my esteemed colleague Mr. Justice Callejo, insofar as it grants to herein petitioners the right of way through the respondents property.

I would hasten to add that even without the Pinanumpaang Salaysay petitioners' right to demand a right of way from respondents clearly exists under the aegis of Article 652 of the Civil Code. It provides that whenever a piece of land acquired by sale, exchange or partition is surrounded by other estates of the vendor, exchanger or co-owner, he shall be obliged to grant a right of way without indemnity.

While petitioners are not the original vendees of the property, there is no rhyme nor reason not to apply the provision of Article 652 to benefit them. Had the property been directly sold to petitioners by the respondents, the latter would have been obliged to grant the right of way to the former without indemnity. Logic dictates that no different result should ensue just because the transmission of the property to the petitioners was delayed by the prior sale to their predecessor-in-interest.

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