

**SPOUSES MANUEL MEJORADA AND ROSALINDA P. MEJORADA,
PETITIONERS, VS. GLORIFICACION VERTUDAZO, SOL VERTUDAZO,
SPS. JIMMY GALVIZO AND GLOSITA T. GALVIZO, SPS. FERMIN
CABRERA AND EL...**

G.R. NO. 151797. October 11, 2007

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

Before us is a Petition for Review on Certiorari[1] assailing the Decision[2] dated December 4, 2001 of the Court of Appeals in CA-G.R. CV No. 62900, entitled “Glorificacion Vertudazo et al. v. Spouses Manuel and Rosalinda Mejorada.”

The undisputed facts are:

Sometime in 1981, Glorificacion and Sol Vertudazo and their co-respondents established their permanent residence on a 300-square meter lot located at Telaje, Tandag, Surigao del Sur. Their property is landlocked being bordered on all sides by different lots. As an access route going to Quiñones Street and the public highway, they utilized a proposed undeveloped barangay road on the south side of their property owned by Rosario Quiñones.

In 1988, spouses Manuel and Rosalinda Mejorada, petitioners, bought Rosario’s 646-square meter lot adjacent to respondents’ property. Included therein is an area measuring 55.5 square meters which serves as an adequate outlet to Quiñones Street, now the subject of the present controversy. For several years, respondents and the general public have been using that area as a passageway to and from Quiñones Street.

On July 2, 1997, petitioners closed the passageway by building a new garage for their service jeep. Hence, respondents brought the matter to the barangay concerned but no settlement was reached by the parties. Respondents then filed a complaint[3] with the Regional Trial Court, Branch 27, Tandag, Surigao del Sur praying for a grant of easement of right of way over petitioners’ property with an application for writ of preliminary mandatory injunction.

In their answer, petitioners claimed that there is an alternate route which respondents have been using although it was long, circuitous and muddy; that the isolation of respondents’ property was due to their construction of a fence fronting the house of the petitioners; that this made it difficult for petitioners to maneuver their service jeep, hence, they were constrained to construct a new garage; that respondents never offered to pay compensation for the right of way; and that they failed to show that the easement is at the point least prejudicial to the servient estate.

During the hearing, the trial court ordered that the passageway be opened during the day and closed in the evening during the pendency of the case. Petitioners agreed to open it everyday from five o’clock in the morning until nine o’clock in the evening and even volunteered their service jeep to be used in case of any emergency during the rest of the night. Respondents’ application for injunction was then declared moot and the case was archived to

allow the parties to settle the matter amicably.

Nevertheless, petitioners did not abide with their commitment. Thus, on March 5, 1998, respondents filed with the trial court joint motions to cite petitioners in contempt of court and to revive their application for preliminary mandatory injunction. On June 8, 1998, the trial court denied the motion for contempt but granted an injunctive relief, ordering petitioners “to keep open at all times of the day and night for respondents to pass through in going to Quiñones Street and in returning to their respective houses, unhampered and unvexed, during the pendency and until the resolution of the case.” Respondents were ordered to post a bond of P5,000.00. On June 16, 1998, the trial court issued a writ of preliminary mandatory injunction.

After the trial on the merits, or on December 7, 1998, the trial court rendered a Decision in favor of respondents, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered:

- Decreeing the establishment of a compulsory easement of right of way in favor of the plaintiffs over the passageway in question, namely, the 55.5 square meter lot located at Telaje, Tandag, Surigao del Sur, covered by Tax Declaration No. 02030 in the name of defendant Rosalinda P. Mejorada, and ordering the defendants to open and make available the passageway to the plaintiffs and the general public as access road to Quiñones Street;
- Ordering the plaintiffs, jointly and severally, to pay the defendants the value of the 55.5 square meter passageway, the exact amount to be determined by a committee of three assessors, with the Acting Clerk of Court, this Court, or his duly authorized deputy sheriff as Chairman, and with one member to be proposed by the plaintiffs, and the other member, by the defendants, the committee to finish the assessment and submit to this Court its report within fifteen (15) days from their assumption to duty as such assessors; and
- Declaring the preliminary mandatory injunction heretofore issued permanent.

No pronouncement as to cost.

IT IS SO ORDERED.”

On appeal, the Court of Appeals affirmed the Decision of the trial court.

Hence, the present recourse.

The issue for our resolution is whether respondents are entitled to the easement of right of way on the property owned by petitioners.

We find for respondents.

Easement has been defined as an encumbrance imposed upon an immovable for the benefit of another immovable belonging to a different owner. The immovable in favor of which the easement is established is called the dominant estate; that which is subject thereto, the servient estate.[4] In this case, the dominant estate is respondents’ property, while the servient estate belongs to petitioners.

Articles 649 and 650 of the Civil Code provide:

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.
xxx

Art. 650. 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.

A legal or compulsory easement is that which is constituted by law for public use or for private interest. Pursuant to the above provisions, the owner of an estate may claim a legal or compulsory right of way only after he has established the existence of these four (4) requisites: (a) the estate is surrounded by other immovables and is without adequate outlet to a public highway; (b) after payment of the proper indemnity; (c) the isolation was not due to the proprietor's own acts; and (d) the right of way claimed is at a point least prejudicial to the servient estate.[5]

Here, these four requisites have been satisfied.

First, as found by the Court of Appeals, there is no other road which respondents could use leading to Quiñones Street except the passageway on petitioners' property.

Second, respondents have offered to pay petitioners proper indemnity for the easement of way.

Third, the Court of Appeals likewise found that the isolation of respondents' property was not due to their acts.

Fourth, the easement is at the point least prejudicial to petitioners' property. In fact, the area of the easement which is 55.5 square meters is located at the corner of petitioners' landholding, hence, does not cause them inconvenience in anyway.

Verily, we see no reason to reverse the Decision of the Court of Appeals affirming that of the trial court.

WHEREFORE, we DENY the petition. The assailed Decision of the Court of Appeals in CA-G.R. CV No. 62900 is AFFIRMED. Costs against petitioners.

SO ORDERED.

Puno, C.J., (Chairperson), Corona, Azcuna, and Garcia, JJ., concur.

[1] Under Rule 45 of the 1997 Revised Rules of Civil Procedure, as amended.

[2] Penned by Associate Justice Eugenio S. Labitoria (retired) and concurred in by Associate Justice Teodoro P. Regino (retired) and Associate Justice Rebecca De Guia-Salvador.

[3] Docketed as Civil Case No. 1173, for Right of Way.

[4] Article 613, New Civil Code, as amended.

[5] Sta. Maria v. Court of Appeals, G.R. No. 127549, January 28, 1998, 285 SCRA 351; La Vista Association, Inc. v. Court of Appeals, et al., G.R. No. 95252, September 5, 1997, 278 SCRA 498, citing Vda. de Baltazar v. Court of Appeals, 245 SCRA 333 (1995), Locsin v. Climaco, 26 SCRA 816 (1969) and Angela Estate v. CFI of Negros Occidental, 24 SCRA 500 (1968).

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