

**BICOL AGRO-INDUSTRIAL PRODUCERS COOPERATIVE, INC. (BAPCI),
PETITIONER, VS. EDMUNDO O. OBIAS, PERFECTO O. OBIAS, VICTOR
BAGASINA, ELENA BENOSA, MELCHOR BRANDES, ROGELIO
MONTERO, ...**

G.R. No. 172077. October 09, 2009

Ponente: PERALTA, J.

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PERALTA, J.:

Before this Court is a Petition for Review on certiorari[1] under Rule 65 of the Rules of Court, seeking to set aside the August 24, 2005 Decision[2] and March 28, 2006 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 59016.

The facts of the case:

Sometime in 1972, the Bicol Sugar Development Corporation (BISUDECO) was established at Himaa, Pili, Camarines Sur. In the same year, BISUDECO constructed a road ("the disputed road") - measuring approximately 7 meters wide and 2.9 kilometers long. The disputed road was used by BISUDECO in hauling and transporting sugarcane to and from its mill site (Pensumil) and has thus become indispensable to its sugar milling operations.[4]

On October 30, 1992, petitioner Bicol Agro-Industrial Producers Cooperative, Inc. acquired the assets of BISUDECO. On April 19, 1993, petitioner filed a Complaint[5] against respondents Edmundo Obias, Perfecto Obias, Victor Bagasina, Elena Benosa, Melchor Brandes, Rogelio Montero, Pedro Montero, Claudio Resari, Pilar Galon, Antonio Buison, Prudencio Benosa, Jr., Victor Bagasina Jr., Maria Villamer, and Roberto Padua, alleging that on March 27, 1993 and April 3, 1993, respondents unjustifiably barricaded the disputed road by placing bamboos, woods, placards and stones across it, preventing petitioner's and the other sugar planter's vehicles from passing through the disputed road, thereby causing serious damage and prejudice to petitioner.[6]

Petitioner alleged that BISUDECO constructed the disputed road pursuant to an agreement with the owners of the ricefields the road traversed. The agreement provides that BISUDECO shall employ the children and relatives of the landowners in exchange for the construction of the road on their properties. Petitioner contends that through prolonged and continuous use of the disputed road, BISUDECO acquired a right of way over the properties of the landowners, which right of way in turn was acquired by it when it bought BISUDECO's assets. Petitioner prayed that respondents be permanently ordered to restrain from barricading the disputed road and from obstructing its free passage.[7]

In an Order[8] dated April 19, 1993, the Regional Trial Court of Pili (RTC), Camarines Sur, 5th Judicial Region, Branch 31, ordered respondents, their agents and representatives to cease and desist from placing barricades on the disputed road.[9]

In their Answer,[10] respondents denied having entered into an agreement with BISUDECO regarding the

construction and the use of the disputed road. They alleged that BISUDECO, surreptitiously and without their knowledge and consent, constructed the disputed road on their properties and has since then intermittently and discontinuously used the disputed road for hauling sugarcane despite their repeated protests. Respondents claimed they tolerated BISUDECO in the construction and the use of the road since BISUDECO was a government-owned and controlled corporation, and the entire country was then under Martial Law. Respondents likewise denied that the road has become a public road, since no public funds were used for its construction and maintenance. Moreover, respondents alleged that with the exception of Edmundo and Perfecto Obias, they are actual tillers of the ricelands, having acquired their rights over said lands under Presidential Decree No. 27 (PD 27). Edmundo and Perfecto Obias are the owners of the eastern portion of the property on which a portion of the road going to BISUDECO was constructed. Respondents denied that they barricaded the road.[11]

Jaime Manubay and Manolito Maralit, for themselves and in representation of other sugarcane planters, filed the first complaint-in-intervention.[12]

Petitioner filed an Amended Complaint[13] and with leave of court a Re-Amended Complaint,[14] where it averred, as an alternative cause of action in the event the lower court does not find merit in its causes of action, that it will avail of the benefits provided for under Article 649[15] of the New Civil Code. Petitioner thus demanded from respondents a right of way over the disputed road for its use.[16]

Respondents filed an Answer[17] to refute petitioner's alternative cause of action. Respondents claimed that the road from the sugarmill to the Maharlika Highway at Barangay Romero, Bula, Camarines Sur, which exits at the Rural Bank of Bula site, had a distance of only about 15 kilometers; hence, respondents asserted that said road was shorter and was a more appropriate right of way than the disputed road.[18]

On July 21, 1993, the RTC issued a Writ of Preliminary Injunction[19] ordering the respondents to desist from constructing barricades across the road.

On June 28, 1994, nine other cooperatives[20] filed their Complaint-in-Intervention.[21]

On June 25, 1997 the RTC rendered a Decision,[22] the dispositive portion of which reads:

WHEREFORE, premises considered, a decision is hereby rendered declaring the Writ of Preliminary Injunction issued against all the herein defendants, their agents, representatives and such other persons acting in their behalf, permanent and perpetual BUT the plaintiff Bicol Agro-Industrial Cooperative, Inc., (BAPCI) is hereby ordered to pay the owners of the lots affected by the road, viz: Pedro Montero - P299,040.00; Pedro Galon - P52,920.00; Clara Padua - P46,410.00; Antonio Buizon - P35,070.00; Rogelio Montero - P41,160.00; Maria Villamer - P41,580.00; Melchor Brandes - P76,440.00; Prudencio Benosa - P41, 650.00; Elena Benosa - P39,550.00; Victor Bagasina, Jr. - P39,410.00; and Claudio Resari - P40,950.00. Upon full payment thereof, the plaintiff shall be declared the absolute owner of the road in question. Legal rate if interest is hereby imposed upon the plaintiff from the finality of this decision until fully payment hereof. No costs.

SO ORDERED.[23]

The RTC ruled that petitioner failed to present any concrete evidence to prove that there was an agreement between BISUDECO and respondents for the construction of the disputed road.[24] Moreover, it held that petitioner did not acquire the same by prescription.[25] The RTC, however, also held that petitioner was entitled to a compulsory easement of right of way as provided for under Article 649 of the New Civil Code upon payment of proper indemnity to respondents.[26]

Both parties filed a motion for reconsideration of the RTC Decision. Petitioner contended that: (1) the value of the land is excessive; (2) the evidence is insufficient to justify the award; (3) the decision is contrary to law and

jurisprudence. Respondents, on the other hand, alleged that: (1) the trial court erred in declaring the persons mentioned in the decision's dispositive portion to be entitled to indemnity for the construction and the use of the disputed road; (2) BAPCI should not be declared the absolute owner of the disputed road upon full payment of the indemnity due to the defendants; and (3) the decision failed to award damages.[27]

On September 24, 1997, the RTC denied both motions for reconsideration.[28] The parties then appealed to the CA.

On August 24, 2005, the CA rendered a Decision, the dispositive portion of which reads:

WHEREFORE, premises considered, the appeal is PARTLY GRANTED. The assailed decision of the Regional Trial Court, Branch 31, Pili, Camarines Sur, in Civil Case No. P-1899 is hereby MODIFIED as follows: the awards of Php46,410.00 to Clara Padua and Php41,650.00 to Prudencio Benosa are hereby DELETED, and the declaration that the plaintiff BAPCI shall become the absolute owner of the disputed road upon full payment of indemnity is REVERSED and SET ASIDE. Accordingly, the owners of the servient estate in the easement of right of way recognized in this Decision shall retain ownership of the lands affected by the easement in accordance with Art. 630 of the Civil Code. We hereby AFFIRM the appeal in all other respects.

SO ORDERED.[29]

The CA affirmed the finding of the RTC that there was no conclusive proof to sufficiently establish the existence of an agreement between BISUDECO and respondents regarding the construction of the disputed road.[30] Moreover, the CA also declared that an easement of right of way is discontinuous and as such cannot be acquired by prescription.[31] The CA likewise affirmed the finding of the RTC that petitioner was entitled to a compulsory easement of right of way upon payment of proper indemnity to respondents. The CA, however, declared that ownership over the disputed road should remain with respondents, despite the grant of a compulsory easement.[32] Lastly, the CA deleted the awards to Prudencio Benosa (Benosa) and Clara Padua (Padua), since the former never claimed ownership of any portion of the lands affected by the disputed road and the latter was not a party to the proceedings below.[33]

Petitioner then filed a Motion for Reconsideration alleging among others that the CA Decision failed to rule on the issue of estoppel and laches. Moreover, Benosa and Padua filed a Motion for Reconsideration assailing the portion of the CA Decision deleting the award of indemnity to them. On March 28, 2006, the CA issued a Resolution denying the same.

Hence, herein petition, with petitioner raising the following assignment of errors, to wit:

I.

THE HONORABLE COURT OF APPEALS ERRED SERIOUSLY IN NOT FINDING THAT THERE WAS FORGED AN AGREEMENT BETWEEN BISUDECO MANAGEMENT AND THE PRIVATE RESPONDENTS FOR THE CONTRUCTION OF THE ROAD IN QUESTION.

II.

THE HONORABLE PUBLIC RESPONDENT COURT OF APPEALS ERRED IN NOT CONSIDERING THE PRINCIPLES OF PRESCRIPTION, LACHES AND ESTOPPEL IN THE CASE AT BAR.

III.

THE HONORABLE COURT OF APPEALS ERRED IN COMPLETELY DISREGARDING THE CLASSIFICATION OF THE ROAD IN QUESTION AS BARANGAY ROAD.

IV.

IN THE ALTERNATIVE CAUSE OF ACTION, THE PUBLIC RESPONDENT SERIOUSLY ERRED IN CONSIDERING THE VALUATION OF THE LANDS AFFECTED BY THE ROAD IN 1994, AND NOT IN 1974, WHEN SAID ROAD WAS CONSTRUCTED.

V.

THE HONORABLE PUBLIC RESPONDENT ERRED SERIOUSLY WHEN IT FAILED ALSO TO CONSIDER THE LEGAL PRINCIPLE OF UNJUST ENRICHMENT AT THE EXPENSE OF ANOTHER.[34]

At the outset, this Court shall address some procedural matters. Quite noticeably, herein petition is denominated as one filed under Rule 65[35] of the Rules of Court notwithstanding that it seeks to assail the Decision and Resolution of the CA. Clearly, petitioner had availed of the improper remedy as the appeal from a final disposition of the CA is a petition for review under Rule 45 and not a special civil action under Rule 65 of the Rules of Court.[36]

In *Active Realty and Development Corporation v. Fernandez*,[37] this Court discussed the difference between petitions filed under Rule 65 and Rule 45, viz:

A petition for certiorari under Rule 65 is proper to correct errors of jurisdiction committed by the lower court, or grave abuse of discretion which is tantamount to lack of jurisdiction. This remedy can be availed of when "there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law."

Appeal by certiorari under Rule 45 of the Rules of Court, on the other hand, is a mode of appeal available to a party desiring to raise only questions of law from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law.

x x x The general rule is that the remedy to obtain reversal or modification of judgment on the merits is appeal. Thus, the proper remedy for the petitioner should have been a petition for review on certiorari under Rule 45 of the Rules of Court since the decision sought to be reversed is that of the CA. The existence and availability of the right of appeal proscribes a resort to certiorari, because one of the requisites for availment of the latter is precisely that "there should be no appeal. The remedy of appeal under Rule 45 of the Rules of Court was still available to the petitioner.[38]

Rule 45 is clear that decisions, final orders or resolutions of the Court of Appeals in any case, i.e., regardless of the nature of the action or proceeding involved, may be appealed to this Court by filing a petition for review, which would be but a continuation of the appellate process over the original case.[39] Moreover, it is basic that one cannot avail of the remedy provided for under Rule 65 when an appeal is still available. Hence, petitioner should have filed its petition under Rule 45.

The procedural infirmity notwithstanding and in the interest of substantial justice, this Court shall consider herein petition as one filed under Rule 45 especially since it was filed well within the reglementary period proscribed under the said Rule. The Court also takes notice that the assignment of errors raised by petitioner does not allege grave abuse of discretion or lack of jurisdiction on the part of the CA.

On the Existence of an Agreement between BISUDECO and Respondents

Anent the first error raised, petitioner argues that the CA erred in not finding that BISUDECO and respondents forged an agreement for the construction of the road in dispute. Petitioner thus asserts its entitlement to an easement of right of way over the properties of respondents by virtue of said agreement.

An easement of right of way was succinctly explained by the CA in the following manner, to wit:

Easement or servitude is an encumbrance imposed upon an immovable for the benefit of another immovable belonging to a different owner. By its creation, easement is established either by law (in which case it is a legal easement) or by will of the parties (a voluntary easement). In terms of use, easement may either be continuous or discontinuous. The easement of right of way - the privilege of persons or a particular class of persons to pass over another's land, usually through one particular path or linen - is characterized as a discontinuous easement because its use is in intervals and depends on the act of man. Because of this character, an easement of a right of way may only be acquired by virtue of a title.[40]

Article 622 of the New Civil Code is the applicable law in the case at bar, viz:

Art. 622. Continuous non-apparent easements, and discontinuous ones, whether apparent or not, may be acquired only by virtue of a title(Emphasis underscorinh supplied)

Based on the foregoing, in order for petitioner to acquire the disputed road as an easement of right-of-way, it was incumbent upon petitioner to show its right by title or by an agreement with the owners of the lands that said road traversed.

While conceding that they have no direct evidence of the alleged agreement, petitioner posits that they presented circumstantial evidence which, if taken collectively, would prove its existence.[41] Specifically, petitioner cites the following circumstances, to wit:

- The agreement was of public knowledge.[42] Allegedly BISUDECO and respondents entered into an agreement for the construction of the road provided that the latter, their children or relatives were employed with BISUDECO.
- The road was continuously used by BISUDECO and the public in general.[43]
- There was no protest or complaint from respondents for almost a period of two decades.[44]
- The portions of the land formerly belonging to respondents affected by the road were already segregated and surveyed from the main lots.[45]
- The road in dispute is already a barangay road.

The well-entrenched rule in our jurisdiction is that only questions of law may be entertained by this Court in a petition for review on certiorari. This rule, however, is not iron-clad and admits certain exceptions, such as when (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the findings of absence of facts are contradicted by the presence of evidence on record; (8) the findings of the Court of Appeals are contrary to those of the trial court; (9) the Court of Appeals manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the Court of Appeals are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties.[46]

After a painstaking review of the records, this Court finds no justification to warrant the application of any exception to the general rule.

Crucial to the petitioner's cause was its burden of proving the existence of the alleged agreement between BISUDECO and respondents for the construction of the road. In this regard, the RTC found that petitioner failed to prove its existence, to wit:

It is clear that the plaintiff failed to present any concrete evidence to prove that there was such an agreement between BISUDECO and defendants. Hereunder quoted are the testimonies of plaintiff's witnesses regarding the alleged agreement.

Romeo Deveterbo, Transportation Superintendent of BISUDECO testified -

Cross Examination by Atty. Pejo

Q:

You also mentioned that there was an agreement between Senator Cea, Mr. Obias and some of the tenants?

A:

Yes.

Q:

You mentioned that this was not in writing, am I right?

A:

Yes.

Q:

How did you know about it that it was not in writing, who told you, Senator Cea?

A:

It was commonly known to all original employees of the BISUDECO.

Q:

You know it from the management?

A:

From co-employees.

Q:

You learned about that agreement from you co-employees?

A:

Yes.

Q:

In other words, therefore, that is why you said you are confused between Edmundo Cea and Perfecto Obias because you just learned it from other employees and you were never present when they talked about it, am I right?

A:

Yes. x x x

To this effect also is the testimony of Angel Lobo, head of the agricultural Department of BAPCI, to wit:

A:

Yes, your Honor?

COURT:

From where did you learn?

A:

From people whom I talked with at that time and it is a public common knowledge at that time.

x x x

Atty. Carandang: I repeat my question, Your Honor.

You said you acquired it from or because of common knowledge and you mentioned some people. Who are those people you are referring to whom you acquired that knowledge?

A:

Most of all, the late Benjamin Bagasina, Barangay Captain at that time who was our employee in consideration of this agreement, then we have also a Civil Engineering Head, Civil Engineering Department who is responsible for the maintenance of this road. I learned from him that this arrangement established the fact why this road was constructed.

Q:

Who is the head of the Engineering Dept?

x x x

COURT: May answer.

A:

Engineer Pablo Tordilla who was then the head of our Civil Engineering Dept.

But this Engineer Pablo Tordilla, Lobo's alleged source of the information, was never presented in Court. And, according to the Chief Accountant of BAPCI, David Severo:

A:

When I was interviewing Mrs. Alma Montero Penaflor she filed to me a certain arrangement related to the used of the land to Himaao as road going to the central.

COURT: You mean Himaao Millsite road?

A:

Yes, sir.

Atty. Carandang:

Q: What arrangement is that supposedly filed to you?

A: She told me in exchange for the use of the road, the relatives or owners or tenants of the land will be hired by the sugar Central?

COURT:

Q: So, only the tenants not the owners?

A: The tenant's children the road belongs.

x x x

Finally, intervenor Antonio Austria, in trying to show you that there was consent and approval on the part of the defendant Edmundo Obias to give the right of way to BISUDECO at the time to be used in hauling the sugarcane of the planters to the Central, averred the following uncertain statements:

A:

Well, he has (sic) having a case against PENSUNIL, regarding the property I think the right of way going to PENSUMIL right now we discuss it and he said he is allowing it anymore but then I reminded him wayback in 1974 to 1980 he was one of the biggest planters in the part of Partido so he consented to the late I think Edmundo Cea, the owner of BISUDECO at that time to pass his property since he is also milling a lot of things at that time and many other things one of the concession mill was I think some of the tenants there in Himaao will be employed in the mill.

x x x

These aforequoted testimonies of the plaintiff's witnesses failed to satisfactorily establish the plaintiff's contention that there was such an agreement. Likewise, the list of the Employees of Defendants' relatives, son/daughter employed by the BISUDECO (Exhibit H) does not in any manner prove the alleged agreement.[47]

For its part, the CA also ruled that petitioner failed to prove the existence of the said agreement, to wit:

Like the lower court, we found no conclusive proof to sufficiently establish the existence of an agreement between BISUDECO and the defendants-appellants regarding the construction and the use of the disputed road. The lower court correctly disbelieved the plaintiffs-appellants' contention that an agreement existed because there is simply no direct evidence to support this allegation. BAPCI submitted purely circumstantial evidence that are not sufficiently adequate as basis for the inference than an agreement existed. By themselves, the circumstances the plaintiffs-appellants cited - i.e., the employment of sixteen (16) relatives of the defendants-appellants; the defendants-appellants' unjustified silence; the fact that the existence of the agreement is known to everyone, etc. - are events susceptible of diverse interpretations and do not necessarily lead to BAPCI's desired conclusion. Additionally, the testimonies that the plaintiffs-appellants presented are mainly hearsay, as not one among the witnesses had personal knowledge of the agreement by reason of direct participation in the agreement or because the witness was present when the agreement was concluded by the parties. Thus, given the defendants-appellants' categorical denial that an agreement existed, we sustain the lower's conclusion that no agreement existed between BISUDECO and the defendants-appellants.[48]

Based on the foregoing, the inability of petitioner to prove the existence of an agreement militates its allegations in herein petition. On this score, both the RTC and the CA are one in ruling that petitioner had failed to prove the existence of the agreement between BISUDECO and the respondents for the construction of the road. Also, well-established is the rule that "factual findings of the Court of Appeals are conclusive on the parties and carry even more weight when the said court affirms the factual findings of the trial court." [49] Hence, this Court finds no reason to reverse such findings.

On Acquisition by Prescription

Petitioner would have this Court re-examine *Costabella Corporation v. Court of Appeals* [50] (*Costabella*) where the Court held that, "It is already well-established that a right of way is discontinuous and, as such, cannot be acquired by prescription." [51] Petitioner contends that some recognized authorities [52] share its view that an easement of right of way may be acquired by prescription.

Be that as it may, this Court finds no reason to re-examine *Costabella*. This Court is guided by *Bogo-Medellin Milling Co., Inc. v. Court of Appeals*[53] (*Bogo-Medellin*), involving the construction of a railroad track to a sugar mill. In *Bogo-Medellin*, this Court discussed the discontinuous nature of an easement of right of way and the rule that the same cannot be acquired by prescription, to wit:

Continuous and apparent easements are acquired either by virtue of a title or by prescription of ten years.

The trial court and the Court of Appeals both upheld this view for the reason that the railroad right of way was, according to them, continuous and apparent in nature. The more or less permanent railroad tracks were visually apparent and they continuously occupied the subject strip of land from 1959 (the year the easement granted by *Feliciana Santillan* to petitioner expired). Thus, with the lapse of the 10-year prescriptive period in 1969, petitioner supposedly acquired the easement of right of way over the subject land.

Following the logic of the courts a quo, if a road for the use of vehicles or the passage of persons is permanently cemented or asphalted, then the right of way over it becomes continuous in nature. The reasoning is erroneous.

Under civil law and its jurisprudence, easements are either continuous or discontinuous according to the manner they are exercised, not according to the presence of apparent signs or physical indications of the existence of such easements. Thus, easement is continuous if its use is, or may be, incessant without the intervention of any act of man, like the easement of drainage; and it is discontinuous if it is used at intervals and depends on the act of man, like the easement of right of way.

The easement of right of way is considered discontinuous because it is exercised only if a person passes or sets foot on somebody else's land. Like a road for the passage of vehicles or persons, an easement of right of way of railroad tracks is discontinuous because the right is exercised only if and when a train operated by a person passes over another's property. In other words, the very exercise of the servitude depends upon the act or intervention of man which is the very essence of discontinuous easements.

The presence of more or less permanent railroad tracks does not, in any way, convert the nature of an easement of right of way to one that is continuous. It is not the presence of apparent signs or physical indications showing the existence of an easement, but rather the manner of exercise thereof, that categorizes such easement into continuous or discontinuous. The presence of physical or visual signs only classifies an easement into apparent or non-apparent. Thus, a road (which reveals a right of way) and a window (which evidences a right to light and view) are apparent easements, while an easement of not building beyond a certain height is non-apparent.

In *Cuba*, it has been held that the existence of a permanent railway does not make the right of way a continuous one; it is only apparent. Therefore, it cannot be acquired by prescription. In *Louisiana*, it has also been held that a right of passage over another's land cannot be claimed by prescription because this easement is discontinuous and can be established only by title.

In this case, the presence of railroad tracks for the passage of petitioner's trains denotes the existence of an apparent but discontinuous easement of right of way. And under Article 622 of the Civil Code, discontinuous easements, whether apparent or not, may be acquired only by title. Unfortunately, petitioner *Bomedco* never acquired any title over the use of the railroad right of way whether by law, donation, testamentary succession or contract. Its use of the right of way, however long, never resulted in its acquisition of the easement because, under Article 622, the discontinuous easement of a railroad right of way can only be acquired by title and not by prescription.[54]

Applying *Bogo-Medellin* to the case at bar, the conclusion is inevitable that the road in dispute is a discontinuous easement notwithstanding that the same may be apparent. To reiterate, easements are either continuous or discontinuous according to the manner they are exercised, not according to the presence of apparent signs or

physical indications of the existence of such easements. Hence, even if the road in dispute has been improved and maintained over a number of years, it will not change its discontinuous nature but simply make the same apparent. To stress, Article 622 of the New Civil Code states that discontinuous easements, whether apparent or not, may be acquired only by virtue of a title.

On Laches and Estoppel

Petitioner argues that estoppel and laches bar respondents from exercising ownership rights over the properties traversed by the road in dispute. In support of said argument, petitioner posits that BISUDECO had been peacefully and continuously using the road without any complaint or opposition on the part of the respondents for almost twenty years. Respondents, on the other hand, claim that they merely tolerated the use of their land as BISUDECO was a government-owned and controlled corporation and considering that the disputed road was constructed during the time of Martial Law.

There is no absolute rule on what constitutes laches. It is a rule of equity and applied not to penalize neglect or sleeping on one's rights, but rather to avoid recognizing a right when to do so would result in a clearly unfair situation. The question of laches is addressed to the sound discretion of the court and each case must be decided according to its particular circumstances.[55] It is the better rule that courts, under the principle of equity, should not be guided or bound strictly by the statute of limitations or the doctrine of laches if wrong or injustice will result.[56]

In herein petition, the CA denied petitioner's argument in the wise:

As previously explained in our Decision, the applicable law is Article 622 of the Civil Code of the Philippines, which provides:

Art. 622. Continuous non-apparent easements, and discontinuous ones, whether apparent or not, may be acquired only by virtue of a title.

The eminent jurist, former Senator Arturo M. Tolentino, opines that this provision seeks to prevent the imposition of a burden on a tenement based purely on the generosity, tolerance and spirit of neighborliness of the owners thereof.

We applied the cited provision to the case in ruling that no easement of right of way was acquired; based on the evidence presented, the plaintiff-appellant failed to satisfactorily prove the existence of an agreement evidencing any right or title to use the disputed road. We additionally rejected the plaintiff-appellant's position that it had acquired the easement of right of way through acquisitive prescription, as settled jurisprudence states that an easement of right of way cannot be acquired by prescription.

We hold the same view on the issue of acquisition of an easement of right of way by laches. To our mind, settled jurisprudence on the application of the principle of estoppel by laches militates against the acquisition of an easement of right of way by laches.

Laches is a doctrine in equity and our courts are basically courts of law and not courts of equity; equity, which has been aptly described as "justice outside legality," should be applied only in the absence of, and never against, statutory law; *Aequitas nunquam contravenit legis*. Based on this principle, we find that the positive mandate of Article 622 of the Civil Code - the statutory provision requiring title as basis for the acquisition of an easement of a right of way - precludes the application of the equitable principle of laches.[57]

This Court agrees with the CA. The fact that the law is categorical that discontinuous easements cannot be acquired by prescription militates against petitioner's claim of laches. To stress, discontinuous easements can only be acquired by title. More importantly, whether or not the elements of laches are present is a question involving a

factual determination by the trial court.[58] Hence, the same being a question of fact, it cannot be the proper subject of herein petition. On the other hand, as to the issue of estoppel, this Court likewise agrees with the finding of the CA that petitioner did not present any evidence that would show an admission, representation or conduct by respondents that will give rise to estoppel.[59]

Classification of the Road in Dispute as a Barangay Road

Petitioner argues that the CA erred when it disregarded the classification of the road in question as a barangay road. In support of said argument, petitioner presented Exhibit Q, a Tax Declaration or Field Appraisal and Assessment Sheet[60] (1991 FAAS) with Survey Number 1688-40 and PIN No. 026-01-009-08-037, dated April 30, 1991, which they claim proves that the road in dispute is already a barangay road.

The same is again a question of fact which cannot be the proper subject of herein petition. Petitioner cannot have this Court re-examine the evidentiary value of the documents it presented before the RTC as the same is not a function of this Court. In any case, after a closer scrutiny of the 1991 FAAS, this Court holds that the same is insufficient to prove petitioner's claim.

Respondents, in their Comment,[61] argue against the classification of the road in dispute as a barangay road in the wise:

Petitioner also stated that the Honorable Court of Appeals fails to consider the fact that the owner of the road in question is the Municipality of Pili in the Province of Camarines Sur and as proof of such claim they presented and marked as Exhibit Q, tax declaration no. 009-756 or Annex D of their Petition. However, private respondents wish to call the attention of this Honorable Court to the following:

- Tax Declaration No. 009-828 attached as Annex C-6 of the Verified Petition declared in the name of Edmundo Obias (one of the private respondents);
- Actual Use portion of said Annex C-6 marked as Exh. No. N-6-a-1 which states "Road Lot (BISUDECO Road)"; and
- The Memoranda portion in the second page of Annex C-6 which states: "Revised to declare the property in The name of the rightful owner, Edmundo Obias based from the approved subdivision plan, Bsd-05-000055 (OLT) & technical descriptions. Likewise area was made to conform with the said subdivision plan from 4,773 sq.m. to 11,209 sq.m.

Obviously, the alleged Exhibit Q of the Petitioner is an erroneous tax declaration, thus, negates the claim of the Petitioner that the same is owned by the Municipality of Pili and has been declared a barangay road. Private respondents cannot understand why the herein Petitioner alleged this matter and used it as a proof to support their claim when they are already in possession of a tax declaration correcting the same and even attached the same as part of their Petition.[62]

In its Reply,[63] petitioner counters:

II. While Petitioners claim that the road belongs to the Municipal Government of Pili, yet what they attached to the Petition as Annex "C-7" is a tax declaration of Edmundo Obias. Petitioners have the following observations:

x x x x

(b) That land of Edmundo Obias covered by Annex "C-6" to the Petition is not included or involved in this case at bar. His name does not appear to be awarded in the Decision of the Honorable Court of Appeals and also in the list of beneficiaries to receive monetary considerations made by Mr. Angel Lobo.[64]

After a painstaking review of the records, this Court is more inclined to believe the claim of respondents. The claim of petitioner to the effect that the land of Edmundo Obias is not included in the case at bar is misleading. It may be true that Edmundo was not awarded indemnity by the lower courts, however, the same does not mean that his lands do not form part of the subject matter of herein petition.

It bears to stress that Edmundo claimed in the CA that he was the owner of the affected ricelands and that respondents were merely his tenants-beneficiaries under PD 27, otherwise known as the Tenant Emancipation Decree.[65] The CA, however, dismissed said claim because it was raised for the first time on appeal. It also held that the averments in the documents submitted by Edmundo in the RTC described respondents as "owners" of the land they till; hence, the same constituted binding judicial admissions.[66]

Based on the foregoing, petitioner's attempt to refute the contents of the 1995 FAAS by claiming that the lands of Edmundo are not involved in the case at bar must fail. It is clear that respondents are the tenant-beneficiaries of the lands of Edmundo under PD 27; hence, contrary to the claim of petitioner, the lands of Edmundo are the subject matter of herein petition.

In addition, it is curious that petitioner relies on the 1991 FAAS yet finds exception to the contents of the 1995 FAAS. After a closer scrutiny of both documents, it appears to this Court that the land described in the 1991 FAAS is also the same land described in the 1995 FAAS. Both FAAS involve land measuring 4,773 square meters. Likewise, both FAAS have the same PIN Number (026-01-009-08-037) and Survey Number (1688-40). Accordingly, the annotation contained in the 1995 FAAS, to the effect that a "BISUDECO road" does not belong to the Municipality of Pili, serves to weaken petitioner's claim.

The Court also considers portions of the RTC Decision where it can be gathered that the road in dispute is not a barangay road, to wit:

At this point, it is important to note that defendants admitted the identity of the road and the area of the same as reflected in the Commissioner's Report, during the Pre-trial held last September 19, 1995.

Engr. Roberto Revilla testified that a portion of the road inside the property of Edmundo Obias, is a barangay road which are lots A-52 sq.m., B-789 sq.m. and C-655 sq.m. or a total of 1,497 sq.m. which starts from the intersection of the National Road and the road to Penumil up to Corner 9 of Lot 37, Bsc-05-000055 (OCT) in the name of Pedro O. Montero. Engr. Revilla concluded that the actual area occupied by the road in question is the sum of areas of Lots D-2042 sq.m., E-2230 sq.m., F-756 sq.m., G-663 sq.m., H-501 sq.m., I-588 sq.m., J-594 sq.m., K-1092 sq.m., L-595 sq.m., M-459 sq.m., N-106 sq.m., O-585 sq.m. and P-563 sq.m., or a total of 10,774 square meters. Said road starts from corner 9 of the lot of Pedro Montero which is equivalent to corner 25 of Lot 40 Bsd-05-000055 (OCT) going to the Southern Direction and ending at corner 25 of Lot 1688 Cad. 291 Pili Cadastre covered by OCT No. 120-217 (1276) in the name of spouses Edmundo Obias and Nelly Valencia and spouses Perfecto Obias and Adelaida Abenojar.[67]

The RTC findings of fact thus shows that while certain portions of the property of Edmundo is a barangay road, the same only pertains to Lots A, B and C, or a total of 1,497 square meters, which is distinct from the road in dispute which pertains to different lots (lots E to P) and covers a total area of 10,774 square meters.

In light of the foregoing, considering that the contents of the 1991 FAAS is disputable, it was incumbent on petitioner to present documents which would evidence the expropriation of the road in dispute by the local government as a barangay road. Under the prevailing circumstances, the documents of the expropriation proceedings would have been the best evidence available and the absence thereof is certainly damaging to petitioner's cause.

Amount of Indemnity Due & On Unjust Enrichment

Petitioner manifested in the RTC its desire, in the alternative, to avail of a compulsory easement of right of way as provided for under Article 649 the New Civil Code. Said relief was granted by the RTC because of the unavailability of another adequate outlet from the sugar mill to the highway. Despite the grant of a compulsory easement of right of way, petitioner, however, assails both the RTC and CA Decision with regard to the amount of indemnity due respondents.

Petitioner likens the proceedings at bar to an expropriation proceeding where just compensation must be based on the value of the land at the time of taking.[68] Petitioner thus maintains that the compensation due to respondents should have been computed in 1974 when the road was constructed.[69]

This Court does not agree. Article 649 of the New Civil Code states:

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.(Emphasis supplied.)

Based on the foregoing, it is clear that the law does not provide for a specific formula for the valuation of the land. Neither does the same state that the value of the land must be computed at the time of taking. The only primordial consideration is that the same should consist of the value of the land and the amount of damage caused to the servient estate. Hence, the same is a question of fact which should be left to the sound discretion of the RTC. In this regard, the RTC ruled:

The market value per hectare in 1974 or at the time of taking or prior to its conversion to road is P6,500/hectare, the same being a first class riceland irrigated therefore the total market value is P6,864.31. The 1994 Market Value of P1,292,880.00 is the value assigned to the property in question after it was already developed as a road lot where the unit value applied per square meter is P120.00 for 5[th] class residential lot.

It has to be remembered however that the cost of transforming the land to road was entirely borne by BISUDECO including its maintenance, repair and the cost of the improvements and by plaintiff after its acquisition. Thus, the P120.00 unit value is exorbitant while the 1974 valuation of P6,500/hectare is low and unreasonable.

In fine, this Court will adopt the unit value of P70.00 per square meter as shown by Exhibit "Q," the Real Property Field Assessment Sheet No. 009-756.[70]

In addition, the CA ruled:

We stress that the amount of proper indemnity due to the landowners does not only relate to the market value of their property but comprehends as well the corresponding damage caused to the servient estate. It is undisputed that the BISUDECO began the construction and used of the disputed road in 1974. While the maintenance was borne by BISUDECO and now by BAPCI who principally used the disputed road for their sugar milling operations, the defendants-appellants have been deprived of the use do their ricefields because of the road's construction since 1974. Thus, it is but proper to compensate them for this deprivation, over and above the prevailing market value of the affected property. To our mind, in light of the circumstances surrounding the acquisition of the affected ricelands and the construction of the disputed road, particularly the absence of a definitive agreement to show that the defendants-appellants consented to the road's construction, we find the P70.00 per square meter indemnity awarded by the lower court in accordance with the Real Property Field Assessment Sheet No. 009-756, to be fair and reasonable under the circumstances.[71]

Withal, this Court finds no error as to the proper amount of indemnity due respondents as the findings of both the RTC and the CA appear to be fair and reasonable under the prevailing circumstances and in accordance with the provisions of Article 649 of the New Civil Code.

WHEREFORE, premises considered, the petition is DENIED. The August 24, 2005 Decision and October 27, 2005 Resolution of the Court of Appeals in CA-G.R. CV No. 59016 are hereby AFFIRMED.

SO ORDERED.

Carpio, (Chairperson), Carpio Morales*, Velasco, Jr., and Nachura, JJ., concur.

* Designated as an additional member in lieu of Associate Justice Minita V. Chico-Nazario per Special Order No. 720 dated October 5, 2009.

[1] Rollo, pp. 8-37.

[2] Penned by Associate Justice Arturo D. Brion (now a member of this Court), with Associate Justices Eugenio S. Labitoria and Eliezer R. de Los Santos concurring; *id.* at 38-60.

[3] Rollo pp. 62-68.

[4] *Id.* at 39-40.

[5] Records, p. 1.

[6] Rollo, p. 40.

[7] Rollo, pp. 40-41.

[8] Records, p. 16.

[9] Rollo, p. 41.

[10] Records, p. 30.

[11] Rollo, pp. 41-42.

[12] Records, p. 39; Note that it does not appear that said intervenors join petitioner in herein petition.

[13] *Id.* at 19.

[14] *Id.* at 67.

[15] 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.

[16] Rollo, p. 42.

[17] Records, p. 73.

[18] Rollo, p. 43.

[19] Records, p. 145.

[20] Peñafrancia Multi-Purpose Sugar Coop.; San Isidro Development Coop. Inc.; Ocampo Small Multi-Purpose Producers Coop. Inc.; Kilantao-Catalotoan Multi-Purpose Coop. Inc.; May-ogob Planters Coop. Inc.; Aniog Planters Multi-Purpose Coop. Inc., Sagnay Sugar Planters Coop. Inc.; Hda. Magdalena Farmers Coop.; and Bicol Sugar Planters Coop. Inc. Note that it does not appear that said intervenors join petitioner in herein petition.

[21] Records, p. 198.

[22] CA rollo, p. 94-102.

[23] Id. at 102.

[24] Id. at 96.

[25] Id. at 98.

[26] Id. at 99-100.

[27] Rollo, p. 44.

[28] Id.

[29] Id. at 59-60.

[30] Id. at 50.

[31] Id. at 51-52.

[32] Id. at 59.

[33] Id. at 55-56.

[34] Id. at 15-16.

[35] 1. Petition for Review - This is a petition for Review on Certiorari under Rule 65 of the New Rules on Civil Procedure assailing the Decision and Resolution rendered by the Honorable Public Respondent Court of Appeals, xxx, with grave abuse of discretion amounting to lack of or excess of jurisdiction and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, hence, this Petition. (Rollo, p. 10).

[36] See National Irrigation Administration v. Court of Appeals, G.R. No. 129169, November 17, 1999, 318 SCRA 255.

[37] G.R. No. 157186, October 19, 2007, 537 SCRA 116.

[38] Id. at 126-127.

[39] See National Irrigation Administration v. Court of Appeals, *supra* note 36, at 264.

[40] Rollo, pp. 51-52.

[41] Id at 18.

[42] Id.

[43] Id.

[44] Id.

[45] Id. at 19.

[46] *Insular Life Assurance Company, Ltd. v. Court of Appeals*, G.R. No. 126850, April 28, 2004, 428 SCRA 79.

[47] CA rollo, 96- 98. (Emphasis ours.)

[48] Rollo, pp. 50-51. (Emphasis ours.)

[49] *Blanco v. Quasha*, 376, Phil. 480, 491 (1999), citing *Bridget Boneng y Bagawili v. People of the Philippines*, 304 SCRA 252. (1999).

[50] G.R No. 80511, January 25, 1991, 193 SCRA 333.

[51] Id. at 339.

[52] See rollo, pp. 24-25. Petitioner contends:

There are some who believe, however, that the right of way can be acquired by prescription (8 Vera 297). The continuity in the exercise of a right does not have to be absolute. If the right is one that is to be exercised at intervals, there is continuity notwithstanding such intervals. The use of the easement may be continuous. In prescription, it is not the acts of possession which are required to be continuous. It is enough that the acts be exercised with some degree of regularity to indicate continuity of possession of the easement. The continuity of a discontinuous easement, therefore, may be very well be continuous (2-11 Colin & Capitant 913; Roggeiro 839-840).

We are inclined to agree with the view just expressed. We must admit that as a general principle, the right of way being discontinuous, it cannot be acquired by prescription, the owner of the tenement would be obliged to disregard the considerations imposed by neighborhoodliness; he would have to prevent passage over his tenement because he may wake up some day to find that the easement has already been established. But if the right is permanent and has an apparent sign, such as a road, we see no reason why it cannot be acquired by prescription. If the land itself occupied by the road can be acquired in ownership, why can't a servitude, which is less than ownership, be acquired? If in order to establish the right to the road, the adverse claimant asserts ownership thereof and not merely the easement of passage, the result would be serious and prejudicial to the owner, in protecting a less right, a greater one would be lost. If there is permanent road, the easement, or at least its possession, should be regarded as continuous, because the existence of the road is a continuous assertion of a right against the exclusive domination of the owner, which right of way under the circumstances should, therefore, be acquired by prescription, so long as the exercise thereof is not by tolerance of the owner of the tenement over which the road has been built. (Tolentino, *Civil Code of the Philippines*, Vol. II, p. 331, 1963).

[53] 455 Phil. 285 (2003).

[54] Id. at 303-305. (Emphasis and underscoring ours.)

[55] *Villanueva-Mijares v. Court of Appeals*, 386 Phil. 555, 565 (2000).

[56] *Bogo-Medellin*, supra note 53, at 303.

[57] Rollo, pp. 65-66.

[58] *Pineda v. Heirs of Eliseo Guevara*, G.R No. 143188, February 14, 2007, 515 SCRA 627.

[59] Rollo p. 68.

[60] Id. at 77.

[61] Id. at 81-86.

[62] Id. at 83-84.

[63] Id. at 97-100.

[64] Id. at 99.

[65] Id. at 45.

[66] Id. at 54-55.

[67] CA rollo, p. 100.

[68] Rollo, p. 33.

[69] Id.

[70] CA rollo, pp. 100-101.

[71] Rollo, p. 57.

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