UNISOURCE COMMERCIAL AND DEVELOPMENT CORPORATION, PETITIONER, VS. JOSEPH CHUNG, KIAT CHUNG AND KLETO CHUNG, RESPONDENTS.

G.R. No. 173252. July 17, 2009

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

The instant petition assails the Decision[1] dated October 27, 2005 and the Resolution[2] dated June 19, 2006 of the Court of Appeals in CA-G.R. CV No. 76213. The appellate court had reversed and set aside the Decision[3] dated August 19, 2002 of the Regional Trial Court of Manila, Branch 49, in Civil Case No. 00-97526.

The antecedent facts are as follows:

Petitioner Unisource Commercial and Development Corporation is the registered owner of a parcel of land covered by Transfer Certificate of Title (TCT) No. 176253[4] of the Register of Deeds of Manila. The title contains a memorandum of encumbrance of a voluntary easement which has been carried over from the Original Certificate of Title of Encarnacion S. Sandico. The certified English translation[5] of the annotation reads:

> By order dated 08 October 1924 of the Court of First Instance of Manila, Chamber IV (AP-7571/T-23046), it is declared that Francisco Hidalgo y Magnifico has the right to open doors in the course of his lot described as Lot No. 2, Block 2650 of the map that has been exhibited, towards the left of the Callejon that is used as a passage and that appears as adjacent to the said Lot 2 and to pass through the land of Encarnacion Sandico y Santana, until the bank of the estero that goes to the Pasig River, and towards the right of the other Callejon that is situated between the said Lot 2 and Lot 4 of the same Block N.[6]

As Sandico's property was transferred to several owners, the memorandum of encumbrance of a voluntary easement in favor of Francisco M. Hidalgo was consistently annotated at the back of every title covering Sandico's property until TCT No. 176253 was issued in petitioner's favor. On the other hand, Hidalgo's property was eventually transferred to respondents Joseph Chung, Kiat Chung and Cleto Chung under TCT No. 121488.[7]

On May 26, 2000, petitioner filed a Petition to Cancel the Encumbrance of Voluntary Easement of Right of Way[8] on the ground that the dominant estate has an adequate access to a public road which is Matienza Street. The trial court dismissed the petition on the ground that it is a land registration case. Petitioner moved for reconsideration. Thereafter, the trial court conducted an ocular inspection of the property. In an Order[9] dated November 24, 2000, the trial court granted the motion and made the following observations:

> 1. The dominant estate is a property enclosed with a concrete fence with no less than three (3) doors in it, opening to an alley belonging to the servient estate owned by the petitioner. The alley is leading to Matienza St.;
>
> 2. The dominant estate has a house built thereon and said house has a very wide door accessible to Matienza St. without any obstruction. Said street is perpendicular to J.P. Laurel St.

> It is therefore found that the dominant estate has an egress to Matienza St. and does not have to use the servient estate.[10]

In their Answer,[11] respondents countered that the extinguishment of the easement will be of great prejudice to the locality and that petitioner is guilty of laches since it took petitioner 15 years from acquisition of the property to file the petition.

In a Decision dated August 19, 2002, the trial court ordered the cancellation of the encumbrance of voluntary easement of right of way in favor of the dominant estate owned by respondents. It found that the dominant estate has no more use for the easement since it has another adequate outlet to a public road which is Matienza Street. The dispositive portion of the decision reads:

> IN VIEW OF ALL THE FOREGOING, the Court hereby orders the cancellation of the Memorandum of Encumbrance annotated in TCT No. 176253 which granted a right of way in favor of the person named therein and, upon the finality of this decision, the Register of Deeds of the City of Manila is hereby directed to cancel said encumbrance.
>
> With respect to the other prayers in the petition, considering that the same are mere incidents to the exercise by the owners of right of their ownership which they could well do without the Court's intervention, this Court sees no need to specifically rule thereon. The Court cannot award plaintiff's claims for damages and attorney's fees for lack of sufficient bases therefor.
>
> SO ORDERED.[12]

Respondents appealed to the Court of Appeals. On October 27, 2005, the appellate court reversed the decision of the trial court and dismissed the petition to cancel the encumbrance of voluntary easement of right of way.

The appellate court ruled that when petitioner's petition was initially dismissed by the executive judge, the copy of the petition and the summons had not yet been served on respondents. Thus, when petitioner moved to reconsider the order of dismissal, there was no need for a notice of hearing and proof of service upon respondents since the trial court has not yet acquired jurisdiction over them. The trial court acquired jurisdiction over the case and over respondents only after the summons was served upon them and they were later given ample opportunity to present their evidence.

The appellate court also held that the trial court erred in canceling the encumbrance of voluntary easement of right of way. The appellate court ruled that Article 631(3)[13] of the Civil Code, which was cited by the trial court, is inapplicable since the presence of an adequate outlet to a highway extinguishes only legal or compulsory easements but not voluntary easements like in the instant case. There having been an agreement between the original parties for the provision of an easement of right of way in favor of the dominant estate, the same can be extinguished only by mutual agreement or by renunciation of the owner of the dominant estate.

The decretal portion of the decision reads:

> WHEREFORE, the foregoing considered, the appeal is hereby GRANTED and the assailed decision is REVERSED and SET ASIDE. Accordingly, the petition to cancel the encumbrance of right of way is dismissed for lack of merit.
>
> No costs.
>
> SO ORDERED.[14]

Before us, petitioner alleges that the Court of Appeals erred in:

> I.

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... BRUSHING ASIDE PETITIONER'S CONTENTION THAT THE EASEMENT IS PERSONAL SINCE THE ANNOTATION DID NOT PROVIDE THAT IT IS BINDING ON THE HEIRS OR ASSIGNS OF SANDICO.

II.

... NOT CONSIDERING THAT THE EASEMENT IS PERSONAL SINCE NO COMPENSATION WAS GIVEN TO PETITIONER.

III.

... DISREGARDING THE CIVIL CODE PROVISION ON UNJUST ENRICHMENT.

IV.

... TREATING THE EASEMENT AS PREDIAL.[15]

Petitioner contends that the fact that Sandico and Hidalgo resorted to judicial intervention only shows that they contested the existence of the requisite factors establishing a legal easement. Besides, the annotation itself provides that the easement is exclusively confined to the parties mentioned therein, i.e., Sandico and Hidalgo. It was not meant to bind their heirs or assigns; otherwise, they would have expressly provided for it. Petitioner adds that it would be an unjust enrichment on respondents' part to continue enjoying the easement without adequate compensation to petitioner. Petitioner also avers that to say that the easement has attached to Hidalgo's property is erroneous since such property no longer exists after it has been subdivided and registered in respondents' respective names.[16] Petitioner further argues that even if it is bound by the easement, the same can be cancelled or revoked since the dominant estate has an adequate outlet without having to pass through the servient estate.

Respondents adopted the disquisition of the appellate court as their counter-arguments.

The petition lacks merit.

As defined, an easement is a real right on another's property, corporeal and immovable, whereby the owner of the latter must refrain from doing or allowing somebody else to do or something to be done on his property, for the benefit of another person or tenement. Easements are established either by law or by the will of the owner. The former are called legal, and the latter, voluntary easements.[17]

In this case, petitioner itself admitted that a voluntary easement of right of way exists in favor of respondents. In its petition to cancel the encumbrance of voluntary easement of right of way, petitioner alleged that "[t]he easement is personal. It was voluntarily constituted in favor of a certain Francisco Hidalgo y Magnifico, the owner of [the lot] described as Lot No. 2, Block 2650."[18] It further stated that "the voluntary easement of the right of way in favor of Francisco Hidalgo y Magnifico was constituted simply by will or agreement of the parties. It was not a statutory easement and definitely not an easement created by such court order because `[the] Court merely declares the existence of an easement created by the parties."[19] In its Memorandum[20] dated September 27, 2001, before the trial court, petitioner reiterated that "[t]he annotation found at the back of the TCT of Unisource is a voluntary easement."[21]

Having made such an admission, petitioner cannot now claim that what exists is a legal easement and that the same should be cancelled since the dominant estate is not an enclosed estate as it has an adequate access to a public road which is Callejon Matienza Street.[22] As we have said, the opening of an adequate outlet to a highway can extinguish only legal or compulsory easements, not voluntary easements like in the case at bar. The fact that an easement by grant may have also qualified as an easement of necessity does not detract from its permanency as a property right, which survives the termination of the necessity.[23] A voluntary easement of

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right of way, like any other contract, could be extinguished only by mutual agreement or by renunciation of the owner of the dominant estate.[24]

Neither can petitioner claim that the easement is personal only to Hidalgo since the annotation merely mentioned Sandico and Hidalgo without equally binding their heirs or assigns. That the heirs or assigns of the parties were not mentioned in the annotation does not mean that it is not binding on them. Again, a voluntary easement of right of way is like any other contract. As such, it is generally effective between the parties, their heirs and assigns, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law.[25] Petitioner cites City of Manila v. Entote[26] in justifying that the easement should bind only the parties mentioned therein and exclude those not so mentioned. However, that case is inapplicable since the issue therein was whether the easement was intended not only for the benefit of the owners of the dominant estate but of the community and the public at large.[27] In interpreting the easement, the Court ruled that the clause "any and all other persons whomsoever" in the easement embraces only "those who are privy to the owners of the dominant estate, Lots 1 and 2 Plan Pcs-2672" and excludes "the indiscriminate public from the enjoyment of the right-of-way easement."[28]

We also hold that although the easement does not appear in respondents' title over the dominant estate, the same subsists. It is settled that the registration of the dominant estate under the Torrens system without the annotation of the voluntary easement in its favor does not extinguish the easement. On the contrary, it is the registration of the servient estate as free, that is, without the annotation of the voluntary easement, which extinguishes the easement.[29]

Finally, the mere fact that respondents subdivided the property does not extinguish the easement. Article 618 [30] of the Civil Code provides that if the dominant estate is divided between two or more persons, each of them may use the easement in its entirety, without changing the place of its use, or making it more burdensome in any other way.

WHEREFORE, the instant petition is DENIED. The Decision dated October 27, 2005 and the Resolution dated June 19, 2006 of the Court of Appeals in CA-G.R. CV No. 76213 are AFFIRMED.

SO ORDERED.

Carpio Morales, Chico-Nazario,[*] Leonardo-De Castro,[**] and Brion, JJ., concur.

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[*] Designated member of the Second Division per Special Order No. 658.

[**] Designated member of the Second Division per Special Order No. 635.

[1] Rollo, pp. 26-34. Penned by Associate Justice Josefina Guevara-Salonga, with Associate Justices Delilah Vidallon-Magtolis and Fernanda Lampas Peralta concurring.

[2] Id. at 35-36. Penned by Associate Justice Josefina Guevara-Salonga, with Associate Justices Godardo A. Jacinto and Fernanda Lampas Peralta concurring.

[3] Records, pp. 233-238. Penned by Judge Concepcion S. Alarcon-Vergara.

[4] Id. at 10.

[5] Id. at 11-12.

[6] Id. at 12.

[7] Id. at 50.

[8] Id. at 1-8.

[9] Id. at 34.

[10] Id.

[11] Id. at 42-47.

[12] Id. at 237-238.

[13] ART. 631. Easements are extinguished:

x x x x

(3) When either or both of the estates fall into such condition that the easement cannot be used; but it shall revive if the subsequent condition of the estates or either of them should again permit its use, unless when the use becomes possible, sufficient time for prescription has elapsed, in accordance with the provisions of the preceding number;

[14] Rollo, p. 33.

[15] Id. at 17-18.

[16] Id. at 37-39. On May 3, 2005, the property was divided and TCT Nos. 267948, 267949 and 267950 were issued to respondents.

[17] Private Development Corporation of the Philippines v. Court of Appeals, G.R. No. 136897, November 22, 2005, 475 SCRA 591, 602.

[18] Records, p. 2.

[19] Id. at 3-4.

[20] Id. at 132-142.

[21] Id. at 135.

[22] Id. at 4.

[23] La Vista Association, Inc. v. Court of Appeals, G.R. No. 95252, September 5, 1997, 278 SCRA 498, 514.

[24] Id. at 513.

[25] CIVIL CODE, Art. 1311.

[26] No. L-24776, June 28, 1974, 57 SCRA 497.

[27] Id. at 504.

[28] Id. at 507.

[29] Purugganan v. Paredes, No. L-23818, January 21, 1976, 69 SCRA 69, 77-78.

[30] ART. 618. Easements are indivisible. If the servient estate is divided between two or more persons, the easement is not modified, and each of them must bear it on the part which corresponds to him.

If it is the dominant estate that is divided between two or more persons, each of them may use the easement in its

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entirety, without changing the place of its use, or making it more burdensome in any other way.

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