

SPS. MANUEL AND VICTORIA SALIMBANGON, PETITIONERS, VS. SPS. SANTOS AND ERLINDA TAN, RESPONDENTS.

G.R. No. 185240. January 21, 2010

Ponente: ABAD, J.

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ABAD, J.:

This case is about the admissibility of testimony that tends to modify a written agreement among the parties and the extinction of the easement of right of way upon consolidation in one person of the ownership of the dominant and the servient estates.

The Facts and the Case

Guillermo Ceniza died intestate on July 11, 1951, leaving a parcel of land at Poblacion, Mandaue City. Twenty years later on July 17, 1973 his children Benedicta, Guillermo, Jr., Victoria, Eduardo, and Carlos executed an extrajudicial declaration of heirs and partition, adjudicating and dividing the land among themselves as follows:

1. To Benedicta T. Cabahug, Lot A subject to a perpetual and grat[u]itous road right of way 1.50 m. wide along its NW. boundary in favor of Lots B, E, and D, of the subdivision;
2. To Eduardo Ceniza, Lot B subject to a perpetual and grat[u]itous road right of way 1.50 m. wide along its SW. boundary in favor of Lots A, D & E of the subdivision;
3. To Carlos Ceniza, Lot C;
4. To Guillermo Ceniza Jr., Lot D subject to a perpetual and grat[u]itous road right of way 1.50 m. wide along its NE. boundary in favor of Lot B and E of the subdivision; and
5. To Victoria Ceniza, Lot E, subject to a perpetual and grat[u]itous road right of way 1.50 m. wide along its SW. boundary in favor of Lot D of the subdivision.[1]

Lots A, B, and C were adjacent to a city street. But Lots D and E were not, they being interior lots. To give these interior lots access to the street, the heirs established in their extrajudicial partition an easement of right of way consisting of a 3-meter wide alley between Lots D and E that continued on between Lots A and B and on to the street. The partition that embodied this easement of right of way was annotated on the individual titles issued to the heirs.

Roughly, the lots including the easement of right of way would take the following configurations,[2] not drawn here to accurate size and proportion but illustrative of their relative locations:

CITY STREET

LOT A

LOT B

LOT C

LOT D

LOT E

But, realizing that the partition resulted in an unequal division of the property, the heirs modified their agreement by eliminating the easement of right of way along Lots A, D, and E, and in its place, imposed a 3-meter wide alley, an easement of right of way, that ran exclusively along the southwest boundary of Lot B from Lots D and E to the street.[3] Thus:

CITY STREET

LOT A

LOT B

LOT C

LOT D

LOT E

Victoria (now petitioner Victoria Salimbangon) later swapped lots with Benedicta with the result that Victoria became the owner of Lot A, one of the three lots adjacent to the city street. Victoria and her husband (the Salimbangons) constructed a residential house on this lot and built two garages on it. One garage abutted the street while the other, located in the interior of Lot A, used the alley or easement of right of way existing on Lot B to get to the street. Victoria had this alley cemented and gated.

Subsequently, however, respondent spouses Santos and Erlinda Tan (the Tans) bought Lots B, C, D, and E from all their owners. The Tans built improvements on Lot B that spilled into the easement area. They also closed the gate that the Salimbangons built. Unable to use the old right of way, the Salimbangons lodged a complaint with the City Engineer of Mandaue against the Tans. For their part, the Tans filed an action with the Regional Trial Court (RTC) of Mandaue against the Salimbangons in Civil Case MAN-3223 for the extinguishment of the easement on Lot B and damages with application for preliminary injunction.[4] The Salimbangons filed their answer with counterclaims.

After hearing on February 9, 2001 the RTC rendered judgment, upholding the Salimbangons' easement of right of way over the alley on Lot B, the lot that belonged to the Tans. The court pointed out that the easement in this case was established by agreement of the parties for the benefit of Lots A, D, and E. Consequently, only by mutual agreement of the parties could such easement be extinguished. The RTC declined, however, to award damages to the Salimbangons.

Both parties appealed to the Court of Appeals (CA) in CA-G.R. CV 73468. On July 27, 2007 the CA[5] reversed the RTC decision, extinguished the easement of right of way established on the alley in Lot B of the Tans, and

denied the Salimbangons' claim for damages. The court ruled that based on the testimony of one of the previous owners, Eduardo Ceniza, the true intent of the parties was to establish that easement of right of way for the benefit of the interior lots, namely, Lots D and E. Consequently, when ownership of Lots B, D, and E was consolidated into the Tans, the easement ceased to have any purpose and became extinct. The Salimbangons filed a motion for reconsideration but the CA denied the same in its resolution of October 14, 2008. This prompted them to file the present petition.

Questions Presented

Two questions are presented:

1. Whether or not the CA erred in admitting in evidence contrary to the parol evidence rule Eduardo Ceniza's testimony respecting the true intent of the heirs in establishing the easement of right of way as against what they stated in their written agreement; and
2. Whether or not the CA erred in ruling that the easement of right of way established by the partition agreement among the heirs for the benefit of Lot A has been extinguished.

The Court's Ruling

One. The Salimbangons point out that the CA ought to have rejected Eduardo Ceniza's testimony that the heirs had intended to establish the easement of right of way solely for the benefit of the interior Lots D and E which had no access to the city street. The partition agreement also made Lot A, now owned by the Salimbangons, a beneficiary of that easement. Thus:

2. To Eduardo Ceniza [now the Tans], Lot B subject to a perpetual and grat[u]itous road right of way 1.50 m. wide along its SW. boundary in favor of Lots A, D & E of the subdivision;[6] (Underscoring supplied)

The parol evidence rule, said the Salimbangons, precluded the parties from introducing testimony that tended to alter or modify what the parties had agreed on above.

But the exclusionary provision of the parol evidence rule admits of exceptions. Section 9, Rule 130 of the Revised Rules on Evidence states:

Sec. 9. Evidence of written agreements. - When the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon and there can be, between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement. However, a party may present evidence to modify, explain or add to the terms of the written agreement if he puts in issue in his pleading:

- (a) An intrinsic ambiguity, mistake or imperfection in the written agreement;
- (b) The failure of the written agreement to express the true intent and agreement of the parties thereto;
- (c) The validity of the written agreement; or
- (d) The existence of other terms agreed to by the parties or their successors in interest after the execution of the written agreement.

The term "agreement" includes wills. (7a)

Here, the Tans had put in issue the true intent and agreement of the parties to the partition when they alleged in their complaint that, contrary to what paragraph 2 quoted above seems to imply, the easement was actually for the benefit of Lots D and E only. The complaint thus said:

So that in the same partition instrument, the said heirs voluntarily agreed to establish the so-called "perpetual and gratuitous easement of road right of way" along LOT A, with 1.50 meters wide and along LOT B, with the

same 1.50 meters wide.

Understandably, this servitude voluntarily constituted on LOTS A and B was had for the benefit and use by the owners of LOTS D (Guillermo Ceniza, Jr.) and E (defendant Victoria Ceniza Salimbagon).[7] (Underscoring supplied)

Consequently, with the above averment, the Tans were entitled to introduce evidence to establish the true intent and agreement of the parties although this may depart from what the partition agreement literally provided.

At any rate, as the CA said, the Salimbangons did not object at the hearing to admission of Eduardo Ceniza's testimony even when this seemed at variance, as far as they were concerned, with the partition agreement among the heirs. Consequently, the Salimbangons may also be deemed to have waived their right to now question such testimony on appeal.

Two. The Salimbangons point out that the partition agreement among the heirs established in their favor, as owners of Lot A, an easement of right of way on Lot B from the interior of their lot to the city street. Since theirs was an easement established by agreement of the parties, only by mutual agreement could the same be extinguished.

But, firstly, as Eduardo Ceniza testified, the true agreement of the heirs was for the establishment of an easement of right of way for the benefit solely of the lots that did not have direct access to the street, namely Lots D and E. His testimony made sense.

As originally constituted in that agreement, each of Lots A and B was to contribute a strip of 1.5 meters between them that when combined formed a 3-meter wide alley leading from Lots D and E to the street. To the extent that Lots A and B retained the right to use the 1.5-meter portion that they contributed to the establishment of the easement, the agreement gave their owners the right to use the common alley as well. As Eduardo testified, however, the true intent of the heirs was to give Lots D and E access to the street. Lots A and B did not need this alley since they were facing the street.

Consequently, when the owner of Lots D and E also became the owner of Lot B, the easement of right of way on Lot B became extinct by operation of law.[8] The existence of a dominant estate and a servient estate is incompatible with the idea that both estates belong to the same person.

Secondly, there is no question that when the heirs realized that it was not fair to take strips of 1.5 meters from each of Lots A, D, and E for the easement of right of way when these lots were already small, the heirs executed a "Cancellation of Annotation of Right of Way, etc." that cancelled the easement of right of way they earlier established on Lots A, D, and E and in its place imposed a 3-meter wide easement of right of way solely on Lot B.

Although the "cancellation" document did not say so, it was implicit that the changed location of the easement cancelled not only the 1.5-meter strip of easement imposed on Lot A of the Salimbangons but also their right to use the new 3-meter easement alley that lay entirely on Lot B. Strictly speaking, if the Salimbangons insist that their right as dominant estate under the original partition agreement remains, then that would be partly on a 1.5-meter strip of their own Lot A and partly on the equivalent 1.5-meter strip on the side of Lot B, not on the new 3-meter alley established entirely on Lot B.

The point is that, obviously, in establishing the new easement of right of way, the heirs intended to abandon the old one. Since this 3-meter alley on Lot B directly connected Lots D and E to the street, it is also obvious that only the latter lots were its intended beneficiary. And, with the ownership of Lots B, D, and E now consolidated in a common owner, namely, the Tans, then the easement of right of way on Lot B may be said to have been extinguished by operation of law.[9]

ACCORDINGLY, this Court DENIES the petition and AFFIRMS in all respects the decision dated July 27, 2007 and resolution dated October 14, 2008 of the Court of Appeals in CA-G.R. CV 73468.

SO ORDERED.

Carpio, (Chairperson), Brion, Del Castillo, and Perez, JJ., concur.

- [1] Annex "C" of Petition, rollo, pp. 54-55.
- [2] Based on sketch appearing on Annex "C" of Petition, id. at 55.
- [3] Based on sketch appearing on Annex "D" of Petition, id. at 58.
- [4] Ruffled to Branch 55 and docketed as Civil Case MAN-3223.
- [5] Ruffled to the 19[th] division and docketed as CA-G.R. CV 73468.
- [6] See Extrajudicial Declaration of Heirs and Partition dated July 17, 1973, rollo, pp. 54-55.
- [7] Annex I, Petition, id. at 65, 67.
- [8] CIVIL CODE OF THE PHILIPPINES, Article 631 (1).
- [9] Id.

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