

**ALEJANDRO MASONGSONG, PLAINTIFF AND APPELLEE, VS.
VICTORIA FLORES, DEFENDANT AND APPELLANT.***G. R. No. 36048. September 24, 1932*

Ponente: MALCOLM, J.

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The question here to be decided is whether an alley constructed in accordance with the Revised Ordinances of the City of Manila, and open to the public, falls within the provisions of article 584 of the Civil Code, making codal article 582 concerning easements of light and view inapplicable to buildings separated by a public thoroughfare.

The facts as stipulated may be summarized in the following manner: Alejandro Masongsong is the owner of a lot with Torrens title, situated in the City of Manila. Felipe Cruz, the husband of Victoria Flores, is the owner of an adjoining lot. On the lot of Victoria Flores is a house which was begun to be constructed on July 3, 1925, and was completed on November 10, 1926. This house has windows overlooking the adjoining property of Masongsong, leaving a distance of less than two meters between the two houses. Separating the two houses is an alley which on Exhibits A and B, the latter a sketch prepared by the department of engineering and public works of the City of Manila, is denominated a public alley. The Torrens title of Masongsong extends over this alley. When Masongsong, on June 22, 1928, applied to the city engineer for a permit to construct a house on his property, he bound himself to the following conditions: (1) That the building shall abut or face on the officially approved private alley as shown on the location plan; and (2) that this approved private alley shall be opened to the public and with its approved width preserved (3m.) shall be maintained and kept in good repair by the grantee of this permit, his heirs, executors and assigns and shall never be closed by any person so long as there is a building or structure, abutting, facing or having access to said private alley.

Article 582 of the Civil Code provides that "no windows or balconies or other similar projections which directly overlook the adjoining property may be opened or built without leaving a distance of not less than two meters between the wall in which they are built and such adjoining property." Article 584 of the Civil Code makes the provisions of article 582 inapplicable "to buildings separated by a public thoroughfare" (*una via publica*). As intimated by Manresa in his commentaries on article 584, its dispositions must be harmonized with the municipal ordinances. In this connection, the Revised Ordinances of the City of Manila, in section 103, in speaking of the issuance of permits for the erection of buildings, provides: "That the building shall abut or face upon a public street or alley or on a private street or alley which has been officially approved: And provided, further, That any private street or alley opened in an interior lot for the purposes of this section, once officially approved, shall be open to the general public, and with its approved width preserved, shall be maintained and kept in good repair by the grantee of the permit, his heirs, executors, and assigns, and shall never be closed by any person so long as there is a building or other structure abutting or facing upon such private street or alley." The same Revised Ordinances define, in section 35, an alley as "any public thoroughfare less than seven meters and fifty centimeters in width between established lines."

It will not escape notice, in the first place, that in the sketch of location of the house of Victoria Flores, the

department of engineering and public works of the City of Manila denominated the opening between the houses of Masongsong and Flores as a public alley. In the second place, it will be noticed that in the application of Masongsong to construct his house, it was agreed that the approved private alley shall be opened to the public. In other words, the so-called private alley is not in fact exactly private. For purposes of classification, we have private alleys opened to the public and public alleys, the main difference appearing to be that the first is constructed by private funds and the second by public funds, but with no practical difference as to use. The first is as much public as the latter, for anyone can travel them who has occasion to and no more can be said of the latter. When the applicant for a house to be constructed on an interior lot agrees to have a private alley opened to the public run past his house, he accepts the burdens of the alley as well as its benefits.

It is also proper to observe that, although the house of Victoria Flores was begun to be constructed on July 3, 1925, and received a certificate of final inspection from the City of Manila on November 10, 1926, legal action was only commenced to enforce the right of Masongsong on September 16, 1929. This tolerance came dangerously near to creating an estoppel.

Answering the question at issue, we hold that a private alley open to the public, under the circumstances of this case, "falls within the exception provided by article 584 of the Civil Code to article 582 thereof, and that accordingly the plaintiff has no legal cause of action.

Judgment reversed, without special pronouncement as to costs in either instance.

Abad Santos, Hull, Vickers, Imperial, and Butte, JJ., concur.

DISSENTING

VILLAMOR, J.,

I dissent. In my opinion, although the alley in question is open to the public, yet it has not for that reason become a public alley, inasmuch as the owner of the land, Alejandro Masongsong, has bound himself to maintain and keep it in good repair and never close it so long as there is a building or structure abutting, facing or having access to said private alley, and therefore the moment such building or structure should cease to exist the owner may close said private alley. Avancena, C. J., Street, Ostrand, and Villa-Real, JJ.:

We concur in the dissenting opinion of Justice Villamor.

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