

GENARO F. MENDOZA ET AL., PETITIONERS, VS. EPIFANIA ROSEL ET AL, RESPONDENTS.

G.R. No. 48173. January 30, 1943

Ponente: BOCOBO, J.

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BOCOBO, J.:

Genaro P. Mendoza and Anunciacion E. de Mendoza (now deceased) were sued in the Court of First Instance of Cebu by respondents Epifania Rosel and Paulino Nator who asked for an injunction to forbid the former from closing an easement of right of way appurtenant to respondents' lots. Both the trial court and the Court of Appeals rendered judgment in favor of respondents.

The lots belonging to respondents are a part of a larger parcel of city land which originally pertained to the heirs of Pedro Rodriguez. This large parcel had been subdivided into small lots and sold to various persons, the respondents being among them. In subdividing said tract of land, the original owners had opened an alley, three meters wide, which ran athwart the land, dividing the same into two equal areas. This alley is the only means of access from the small lots belonging to respondents and other persons on the western half of the larger parcel to General Junquera street, which is the only street available. When the title to the piece of land was confirmed in favor of the heirs of Pedro Rodriguez, the court considered said alley as two lots—one of them 45 meters long and 2 meters wide, and the other .40 by 3 meters, and ordered that the corresponding certificates of title thereto be issued.

Petitioners claim that inasmuch as their transfer certificates of title do not mention any lien or encumbrance on their lots, they are purchasers in good faith and for value, and as such have a right to demand from respondents some payment for the use of the alley. However, the Court of Appeals found as a fact that when respondents acquired the two lots which form the alley, they knew that said lots could serve no other purpose than said lots could serve no other purpose than as an alley. The existence of the easement of right of way was therefore known to petitioners who must respect the same, in spite of the fact that their transfer certificates of title do not mention any burden or easement. It is an established principle that actual notice or knowledge is as binding as registration.

Because it is not within the scope of the present case, we do not pass upon the question of whether petitioners are entitled to indemnity from the Visayan Surety and Insurance Corporation from which they acquired these two lots that constitute the alley in question.

The judgment of the Court of Appeals is hereby affirmed, with costs against petitioners. So ordered.

Yulo, C. J., Moran and Lopez Vito, J.J., concur.

CONCURRING**OZAETA, J.,**

I concur. The heirs of Pedro Rodriguez, the original owners of the subdivided lots, were obligated to devote the alley in question as right of way of the purchasers of the surrounding lots. (Article 567, Civil Code.) That is why, as a matter of common knowledge, owners of subdivisions for sale add the cost of the street areas to the price of the surrounding lots. Indeed, no one would buy such building lots if there were no right of way from there to the public highway. Therefore, the heirs of Pedro Rodriguez had no right to encumber, sell, or dispose of said alley which is indicated on the plan as lots 776-B-7 and 776-B-12. Consequently, the successive transfers of said alley down to the present petitioners were null and void

Assuming, without deciding, that the petitioners were purchasers in good faith of lots 776-R-7 and 776-B-12, their action against the Visayan Surety and that of the latter against the heirs of Pedro Rodriguez are left open for determination in a separate suit they may care to institute.

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