

EUSEBIO FRANCISCO, PETITIONER, VS. INTERMEDIATE APPELLATE COURT AND CRESENCIO J. RAMOS, RESPONDENTS.*G.R. No. 63996. September 15, 1989*

Ponente: NARVASA, J.

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Contested in the appellate proceedings at bar is the entitlement of Cresencio J. Ramos, owner of Lot 860-A of the Malinta Estate, to an easement of right of way through the land belonging to petitioner Eusebio Francisco, Lot 266 also of the same Malinta Estate. The Court of First Instance of Bulacan declared Ramos to be so entitled, by judgment rendered in Civil Case No. 66-V-73. That judgment was affirmed by the Intermediate Appellate Court in CA-G.R. No. 60968-R, promulgated on September 7, 1982. Francisco contends that both Courts are wrong, and asks this Court to reverse them. About the basic facts there is no dispute.

Ramos' Lot 860-A used to be a part of Lot 860 of the Malinta Estate. Lot 860 was owned by Cornelia and Frisca Dila, and had a frontage along Parada Road measuring 51.90 meters. Adjoining Lot 860 was Lot 226, owned by Eusebio Francisco, as aforesated; it also had a frontage along Parada Road of 62.10 meters.

On December 3, 1947, the co-owners of Lot 860 (Cornelia and Frisca Dila) executed a deed by which an undivided one-third portion of the land was donated to a niece, Epifania Dila, and another undivided one-third (1/3) portion to the children of a deceased sister, Anacleta Dila, and the remaining portion, also an undivided third, was declared to pertain exclusively to and would be retained by Cornelia Dila.¹ The new co-owners then had Lot 860 subdivided and respectively allocated to themselves as follows:²

Lot 860-A (2,204 sq. m.), to Cornelia Dila;

Lot 860-B (5,291 sq. m.), to Epifania Dila (the niece);

Lot 860-C (3,086 sq. m.), to Cornelia Dila also; and

Lot 860-D (5,291 sq. m.), to the heirs of Anacleta Dila (the other niece).

After this, the co-owners signed a partition agreement,¹ putting an end to their co-ownership and assuming exclusive ownership and possession of their respective individual shares in accordance with the subdivision plan.

The former co-owners evidently overlooked the fact that, by reason of the subdivision, Lot 860-B of Epifania Dila came to include the entire frontage of what used to be Lot 860 along Parada Road, and thus effectively isolated from said road the other lots, i.e., Lots 860-A and 860-C of Cornelia Dila, and Lot 860-D of the children of Anacleta Dila.²

Anyway, Cornelia sold Lot 860-A (2,204 sq. m.) to the sisters Marcosa, Margarita, and Irinea Eugenio.³ And in 1971, the Eugenio Sisters sold the land to Cresencio J. Ramos.⁴

Some months later, in March, 1972, after having set up a piggery on his newly acquired property, Ramos had his

lawyer write to Eusebio Francisco -- owner, as above mentioned, of the adjoining lot, Lot 266 -- to ask for a right of way through the latter's land. Negotiations thereafter had however failed to bring about a satisfactory arrangement. Francisco's proposal for an exchange of land at the rate of one (1) square meter from him to three (3) square meters from Ramos, as was supposedly the custom in the locality, was unacceptable to Ramos.⁵

Later that year, 1972, Ramos succeeded, through the intercession of Councilor Tongco of Valenzuela, in obtaining a three-meter wide passageway through Lot 860-B of Epifania Dila.⁶ Yet in August, 1973, he inexplicably put up a ten-foot high concrete wall on his lot, this was in August, 1973, and thereby closed the very right of way granted to him across Lot 860-B. It seems that what he wished was to have a right of passage precisely through Francisco's land, considering this to be more convenient to him, and he did not bother to keep quiet about his determination to bring suit, if necessary, to get what he wanted.⁷

Francisco learned of Ramos' intention and reacted by replacing the barbed-wire fence on his lot along Parada Road with a stone wall, also in August, 1973.⁸ Shortly thereafter, Francisco was served with summons and a copy of the complaint in Civil Case No. 66-V-73 of the Court of First Instance of Bulacan, instituted by Ramos,⁹ as well as a writ of preliminary mandatory injunction directing him to remove his stone fence and keep his lot open for Ramos' use.¹⁰

Francisco moved to dissolve the mandatory injunction. The Court appointed a commissioner who conducted an ocular inspection of the lots in question, Lots 860-A, 860-B and 266 and submitted a report of his findings. On the basis of the commissioner's report, the Court issued another Order on September 10, 1973,¹¹ granting Ramos -

“... a temporary right of way over defendant's property hereby ordering defendant to immediately remove all obstructions existing on points 2 and 4 of Annex A [of the Commissioner's Report] up to the second post of the stone wall along points 2 and 3 in order that plaintiff may have a free access to his property, upon plaintiff's filing a bond in the sum of P2,000.00 without in any way determining by this grant the issue or issues involved in this case, but merely as a measure of temporary relief in the exercise of its power of equity.”

Ramos posted the required bond, and Court issued the writ of preliminary injunction.¹

After filing his answer with counterclaim,² Francisco once more moved for the setting aside of the injunctive writs on the ground that they had been issued in excess of the Court's jurisdiction since they did more than merely preserve the status quo, and were based on the commissioner's report which was not only inaccurate and inconclusive but had been adopted by the Court without hearing or according him an opportunity to comment on or object to it.³ By Order dated November 19, 1973, the Court dissolved the injunctions, setting aside its Orders of August 31, and September 10, 1973.⁴

Six (6) days later, however, the Court handed down its verdict, adversely to Francisco. The dispositive part thereof reads as follows:

In view of the foregoing premises: (1) the road right of way prayed for by plaintiff over defendant's land, Exhibit 'A-1' is hereby granted, plaintiff shall pay defendant the amount of Twenty Pesos (P20.00) per square meter as indemnity or a total of Three Hundred Fifty Pesos (P350.00) considering that the area of Exhibit 'A-1' is 17.5 square meters; (2) the writ for a permanent mandatory injunction is likewise granted and defendant is consequently directed to remove immediately the adobe fence along the road right of way as fixed by this Court and to refrain from obstructing said passage in any manner whatsoever, upon payment by the plaintiff of the sum of Three Hundred Fifty Pesos to the defendant, through this court; (3) upon the defendant's failure to do so, the Sheriff is hereby directed to immediately remove said obstructions at defendant's expenses; (4) let a copy of the decision be served upon the Register of Deeds of Bulacan for proper annotation of the road right of way on defendant's title, Transfer Certificate of Title over Lot 266 upon finality of this decision.

Defendant's counterclaim for moral and exemplary damages and attorney's fees are dismissed for lack of merit."

Francisco appealed to the Court of Appeals.⁵ In its own decision promulgated on September 7, 1982, the latter affirmed the Trial Court's judgment,⁶ and later denied Francisco's motion for reconsideration.¹ Francisco then appealed to this Court.

Francisco submits that -2

- 1) Ramos' complaint, containing no averment that demand for the easement of right of way had been made only after payment of proper indemnity in accordance with Article 649 of the Civil Code, was dismissible for failure to state a cause of action;
- 2) It was error to brush aside said statutory pre-condition in Article 649 as of "no consequence" or "absurd" in light of "the principle of substantial performance" in Article 1234 of the Civil Code;
- 3) In view of the last paragraph of said Article 649, Francisco's Lot 266 may not be considered a servient estate subject to a compulsory easement of right of way in favor of Ramos' Lot 860-A;
- 4) Courts are not empowered to establish judicial easements; and
- 5) Ramos, was not entitled to a writ of mandatory injunction against Francisco.

In *Bacolod-Murcia Milling Co., Inc. v. Capital Subdivision, Inc.*,³ this Court held that a compulsory easement of way cannot be obtained without the presence of four (4) requisites provided for in Articles 649 and 650 of the Civil Code, which the owner of the dominant tenement must establish, to wit:

- "(1) That the dominant estate is surrounded by other immovables and has no adequate outlet to a public highway (Art. 649, par. 1);
- (2) After payment of proper indemnity (Art. 649, par. 1, end);
- (3) That the isolation was not due to acts of the proprietor of the dominant estate; and
- (4) That the right of way claimed is at the point least prejudicial to the servient estate; and insofar as consistent with this rule, where the distance from the dominant estate to a public highway may be the shortest. (Art. 650)"

What clearly the appealed Decision overlooked or failed to accord the significance due it is the fact already adverted to and which has never been disputed that respondent Ramos, having already been granted access to the public road (Parada Road) through the other adjoining Lot 860-B owned by Epifania Dila -- and this; at the time he was negotiating with petitioner for the similar easement over the latter's Lot 266 that he now claims -- inexplicably gave up that right of access by walling off his property from the passageway thus established. The evidence, also uncontradicted, is that said passageway was 2.76 meters wide, or wide enough to accommodate a truck. The surveyor who at the instance of petitioner made a survey of the premises on September 13, 1973, shortly after Ramos had filed his complaint, verified the existence of said passageway from the presence of tire marks found on the scene and indicated on the sketch plan he prepared the path that it took from said respondent's Lot 860-A through Lot 860-B to Parada Road.⁴ That there was such a passageway was also confirmed by another witness, Parada Barrio Captain Fausto Francisco, one of those who had earlier tried to bring petitioner and respondent to an agreement about the proposed right of way through the property of the former. This witness declared, as already stated, that after the negotiations had been stalled by the failure of the parties to agree on the terms of a proposed land exchange that would have given Ramos access to Parada Road, said respondent had been able to obtain right of passage to the same public road over a 3-meter wide portion of Lot 860-B owned by Epifania Dila through the intercession of Councilor Tongco of Valenzuela.¹ The presence of the tire marks

indicating that the portion of Lot 860-B where they were found had been used as a passageway was also brought to the attention of the Trial Court at the ocular inspection conducted, with the parties present or duly represented, on May 17, 1974.²

The evidence is, therefore, persuasively to the effect that the private respondent had been granted an adequate access to the public highway (Parada Road) through the adjacent estate of Epifania Dila even as he was trying to negotiate a satisfactory agreement with petitioner Francisco for another passageway through the latter's property. If at the time he filed suit against the petitioner, such access (through the property of Epifania Dila) could no longer be used, it was because he himself had closed it off by erecting a stone wall on his lot at the point where the passageway began for no reason to which the record can attest except to demonstrate the isolation of his property alleged in his complaint. But the law makes it amply clear that an owner cannot, as respondent has done, by his own act isolate his property from a public highway and then claim an easement of way through an adjacent estate. The third of the cited requisites: that the claimant of a right of way has not himself procured the isolation of his property had not been met -- indeed the respondent had actually brought about the contrary condition and thereby vitiated his claim to such an easement. It will not do to assert that use of the passageway through Lot 860-B was difficult or inconvenient, the evidence being to the contrary and that it was wide enough to be traversable by even a truck, and also because it has been held that mere inconvenience attending the use of an existing right of way does not justify a claim for a similar easement in an alternative location.

" * * the petitioner contends that since the respondent company constructed the concrete wall blocking his ingress and egress via the Gatchalian Avenue, the nearest, most convenient and adequate road to and from a public highway, he has been constrained to use as his 'temporary' way the adjoining lots belonging to different persons. Said way is allegedly 'bumpy and impassable especially during rainy seasons because of flood waters, mud and tall 'talahib' grasses thereon.' Moreover, according to the petitioner, the road right of way which the private respondents referred to as the petitioner's alternative right of way to Sucat Road is not an existing road but has remained a proposed road as indicated in the subdivision plan of the Sobrina Rodriguez Lombos Subdivision.³

The petitioner's position is not impressed with merit. * * * As borne out by the records of the case, there is a road right of way provided by the Sobrina Rodriguez Lombos Subdivision indicated as Lot 4133-G-12 in its subdivision plan for the buyers of its lots. The fact that said lot is still undeveloped and causes inconvenience to the petitioner when he uses it to reach the public highway does not bring him within the ambit of the legal requisite (of lack of adequate outlet). * * * To allow the petitioner access to Sucat Road through Gatchalian Avenue inspite of a road right of way provided by the petitioner's subdivision for its buyers simply because Gatchalian Avenue allows petitioner a much greater ease in going to and from the main thoroughfare is to completely ignore what jurisprudence has consistently maintained through the years regarding an easement of a right of way, that 'mere convenience for the dominant estate is not enough to serve as its basis. To justify the imposition of this servitude, there must be a real, not fictitious or artificial, necessity for it.'"¹

On the authority of the Bacolod-Murcia ruling already referred to that all the four requisites prescribed in Articles 649 and 650 must be established in order to warrant the creation of a legal or compulsory easement of way, what has already been stated as to the absence of one of those requisites is, without going any further, already decisive of this appeal and impels a reversal of the appealed Decision, which has clearly ignored or failed to correctly appreciate the import of crucial facts dictating a disposition contrary to that made therein.

Whether the Court of Appeals also erred, as the petitioner would put it, in not dismissing the action for want of averment or showing that proper indemnity had been pre-paid for the right of way demanded is not now inquired into. While such a proposition would appear to be supported by the Bacolod-Murcia ruling which in part states that:

"* * * The Central's original complaint only makes reference to a reasonable compensation in paragraph 14 and no more. Assuming that such an expression can be stretched into a manifestation that the Central is willing to pay such compensation as may be ultimately fixed by the Court, it still is not prepayment required by Article 649 of the Civil Code; * * *",

reservations may with reason be held about interpreting Article 649 to require advance payment of indemnity as a condition precedent to the filing of an action for a compulsory right of way. The appealed Decision of the Court of Appeals observes that:

"* * * It is absurd to say that even before the complaint is filed there must be a prior payment of the indemnity -for We do not know as yet how much such indemnity would be. If both parties had previously agreed on such indemnity, no suit would be essential."²

There would, indeed, be some point in looking askance at a reading of the law which would impute to it a strict requirement to pay "proper indemnity" in advance of a suit the purpose of which, in addition to creating an easement, is precisely to fix the amount of the indemnity to be paid therefor.

The question, however, is better left for consideration in a more appropriate setting where a ruling would not constitute the mere dictum that it might be perceived to be were it to be made here.

WHEREFORE, the appealed Decision of the Court of Appeals is REVERSED and SET ASIDE. The complaint in Civil Case No. 66-V-73 of the Court of First Instance of Bulacan is DISMISSED, the private respondent declared without right to the easement sued for, and the writ of preliminary mandatory injunction issued in said case is LIFTED. Costs against the private respondent.

SO ORDERED.

Cruz, Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

1 Exh. 8

2 Exh. 5

1 Exh. 9

2 Exhs. 3, 5, and A

3 Exh. 10

4 Exhs. B, 13-A. N.B. This sale by the Eugenio to Ramos is now involved in CAR Case No. 959 brought by an alleged tenant, Santos Salazar, who claims a right of redemption under the Land Reform Code (Exh. 11).

5 TSN, July 3, 1974, pp. 11-12; TSN, June 26, 1974, pp. 11-17

6 TSN, June 26, 1974, pp. 19-20; see also, Exhs. 1, 2 and 3

7 TSN, June 26, 1974, pp. 20-21; TSN, July 3, 1974, pp. 14-15

8 TSN, June 26, 1974, pp. 21, 27; TSN, July 3, 1974, pp. 14-15, 20-21, 40

9 TSN, July 3, 1974, pp. 16-17; Record on Appeal, p. 6

10 Record on Appeal, pp. 17-18

11 Id., p. 36

1 Id., p. 38

2 Id., p. 40. Franciso prayed for the dismissal of the complaint with treble costs against plaintiff Ramos; and, on his counterclaim, that Ramos be sentenced to pay moral damages of P15,000.00, nominal damages of P5,000.00 and exemplary damages of P5,000.00, plus attorney's fees of P4,000.00, and that he be granted such other relief as might be just and equitable in the premises.

3 Record on Appeal, p. 47

4 Id., p. 93

5 The appeal was docketed as CA-G.R. No. 60968. N.B. Before the record on appeal was sent up to the Court of Appeals, however, Francisco filed a petition for certiorari and mandamus with said Court of Appeals, docketed as CA-G.R. No. SP-04488-R, chiefly impugning the mandatory injunction issued and ordered enforced by the Trial Court, as well as the order requiring him to amend his record on appeal by incorporating certain pleadings therein. The petition was dismissed by the Court of Appeals by judgment dated February 19, 1976. Francisco's petition for review on certiorari of that decision, docketed in this Court as G.R. No. L-43808, was denied for lack of merit, by Resolution of this Court's First Division dated June 16, 1976, and his motion for reconsideration, denied with finality by Resolution dated July 21, 1976.

6 Rollo, pp. 28 et seq.

1 Id., p. 50

2 Petitioner's Memorandum, p. 6

3 17 SCRA 731, 735-736; see also *Angela Estate, Inc. v. CFI of Negros Occidental*, 24 SCRA 500

4 Testimony of Anastacio Z. Canlas, TSN June 18, 1974, pp. 5-10; Exhibit 3

1 TSN June 26, 1974, pp. 19-21; see footnote 8 on p. 2

2 TSN May 17, 1974, pp. 5-6

3 *Ramos vs. Gatchalian Realty, Inc., et al.*, 154 SCRA 703, 711-712

1 See Tolentino, *Civil Code of the Philippines*, Vol. II, 2nd ed., 1972, p. 371

2 Rollo, p.33

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